

Marischal College, London
Has Marischal College,

IN NEW ABERDEEN,

THE POWER OF CONFERRING DEGREES

IN DIVINITY,

LAW S, AND MEDICINE?

*Si quid novisti rectius istis
Candidus imperti; si non, his utere mecum.*

HOR.

ABERDEEN:

D. WYLLIE AND SON,

BOOKSELLERS TO THE QUEEN, AND TO PRINCE ALBERT.

1850.

*The following Statement has been drawn up and published
by a Committee of Senatus, appointed for that purpose.*

KING'S COLLEGE,

January 1st, 1850.

*Has Marischal College, in New Aberdeen, the Power of Confer-
ring Degrees in Divinity, Laws, and Medicine?*

It may perhaps startle some of our readers that we should venture to ask this question, or to hint a doubt respecting the powers which are exercised by Marischal College. We trust, however, that we shall be able to convince even the most incredulous, that there are grave reasons why the question should be asked; and also, why a correct answer should be returned to it. This is the task which we have imposed on ourselves, and which we shall endeavour to perform with the utmost candour and fairness.

There are two ways by which we might attain our object. We might examine the Charters of Marischal College alone, and endeavour to prove that these do not confer on it the powers which it now exercises; or we might institute an enquiry into the privileges possessed by it, and by the University and King's College, and, by contrasting these, arrive at the same conclusion. We have adopted the second course, and shall, therefore, trace the history of both Institutions from their respective foundations; and this is the more necessary, because, although there is no doubt regarding the privileges conferred by Charter on the University and King's College, yet, as a union between it and Marischal College was effected by Act of Parliament in 1641, the question may arise,—Are not the privileges of the former still retained by the latter in virtue of this union, although it is admitted on all hands that the union itself no longer exists? On this part of our argument it will not be necessary to dwell at great length. We shall advert to those points only in the history of both Seminaries which bear more immediately on the subject in question; and our purpose will be most readily accomplished by quoting freely from the Charters of Foundation, in virtue of which the privileges are enjoyed.

UNIVERSITY OF ABERDEEN.

The University of Aberdeen was founded in 1494 by a Bull

issued by Pope Alexander VI., at the request of James IV. of Scotland, and the Erection was made public by Papal authority, 25th February, 1496. In both of these Documents it is designated a *Studium Generale* or University ("in civitate veteri Aberdonensi") for teaching Theology, the Canon and the Civil Law, Medicine, and Polite Literature, or any other lawful Faculty, in the same manner as in the Universities of Paris and Bologna; the Bishop of the Diocese, as was usual in similar cases, being appointed Chancellor: "Prima Erectio Universitatis Studii Generalis Aberdonensis per Alexandrum VI. Pont. R. Dat. Ann. 1494, 4 Id. Febr." *

After enumerating the reasons assigned by King James for wishing to have a University established in the northern part of his dominions, the Charter of Erection proceeds as follows:—"Statuimus et ordinamus, quod in dicta civitate, veteri Aberdonensi, de cætero sit, et perpetuis futuris temporibus vigeat, Studium generale, et Universitas existat studii generalis tam in Theologia ac Jure Canonico et Civili, necnon Medicina et Artibus liberalibus, quam quavis alia licita facultate, in quibus, sicut in prædictis, et quibusvis aliis Studiis generalibus adhuc privilegiatis, ecclesiastici quicumque, qualiacunque beneficia ecclesiastica obtinentes, et laici Magistri et Doctores legant et doceant, ac studere volentes, undecunque fuerint, studeant et proficiant, ac benemeriti gradus et insignia recipere, illaque eis impendi valeant, ipsorumque Studium ibidem eadem auctoritate erigimus et instituimus—Statuentes similiter et ordinantes, quod venerabilis frater noster, Willelmus, et pro tempore existens Episcopus Aberdonensis, sit Studii ac Universitatis hujusmodi Cancellarius, qui aut per eum, seu, sede Episcopali Aberdonensi vacante, per illius capitulum, ad hoc pro tempore deputatus vicarius, in qualibet dictarum facultatum commendabilis vite scholaribus, quos ad hoc Rector Studii, ac Regentes, Magistri, sive Doctores facultatis in qua singuli graduari postulabunt, seu major pars eorundem, idoneos reputaverint, Baccallariatus Licentiæque gradus conferat; ac singuli ipsius Studii Magistri sive Doctores, in facultatibus in quibus ibidem rexerint, aliis cum rigore examinis licentiatis quibuscunque, Magisterii sive Doctoratus insignia, de

* Evidence taken and received by the Commissioners appointed by His Majesty George IV., July 23rd, 1826, vol. iv. p. 129. The Extracts from Charters, &c., are all taken from the Evidence and Report of this Commission. London, 1837.

‘ consilio et assensu aliorum Doctorum sive Magistrorum præfatæ
 ‘ facultatis, impendere et exhibere valeant: Et tunc illi qui in-
 ‘ signia hujusmodi sic receperint, licentiam habeant, tam in prædicto,
 ‘ quam ubicunque terrarum quocunque alio Studio, absque alio
 ‘ examine vel approbatione, legendi, docendi, et cætera faciendi et
 ‘ exercendi quæ Magistri et Doctores in aliquo dictorum Studiorum
 ‘ facere et exercere possunt.”*

James IV., by a Charter dated 2nd May, 1497, ratified and confirmed the Bull of Foundation; conferred on the University all the privileges enjoyed by the Universities of Paris, St. Andrews, and Glasgow; and also bestowed on it certain revenues, for the support of the Members.

Dat. 2 Maii 1497. “Jacobus, Dei gratia Rex Scotorum, Reverendo
 ‘ in Christo patri ac domino, domino Willielmo, Aberdonensi Episco-
 ‘ po, Consiliario nostro prædilecto, ac nostri secreti sigilli custodi,
 ‘ reverentias tanto patri dignas, congruo cum honore, necnon omni-
 ‘ bus probis hominibus totius terræ nostræ, clericis et laicis, salu-
 ‘ tem. Noverint vestra reverenda paternitas ac Universitas, quod
 ‘ sanctissimus Dominus noster, Alexander Papa Sextus, ad Dei
 ‘ laudem animarumque salutem, Regni nostri decus, et ejusdem rei-
 ‘ publicæ utilitatem, ac ad nostri instantiam et requestum gratiose
 ‘ concessit, et erexit Universitatem et generale Studium fieri in
 ‘ civitate veteri Aberdonensi, cum omnibus privilegiis Universitati-
 ‘ bus Parisiensi et Bononiensi, ac quibusvis aliis Studiis gene-
 ‘ ralibus concessis, ut iuibi, favente Deo, viros producat alti consilii
 ‘ et scientiarum margaritis ornatos, tam in Theologia, Jure Canonico
 ‘ et Civili, quam Medicina et Artibus liberalibus ac qualibet alia
 ‘ licita facultate, perpetuis futuris temporibus.”† After alluding
 to grants of Land, bestowed by the Founder, and mentioning those
 which were now mortified by the King, the Charter continues:—
 “In quarum etiam Universitatis, et Studii generalis, &c. damus et
 ‘ concedimus pro perpetuo prædictis regentibus, studentibus, legenti-
 ‘ bus, capellanis et præfatæ Universitati, incorporatis seu incor-
 ‘ porandis, omnia et singula jura, privilegia, libertates et commodi-
 ‘ tates, prout Cristianissimi Francorum reges Universitati Parisi-
 ‘ ensi, et sicuti nostri nobilissimi progenitores, Jacobus Primus,
 ‘ Universitati Sancti Andreæ, et Jacobus Secundus, Scotorum
 ‘ Reges, Universitati Glasguensi donaverunt et concesserunt.”‡

* Evidence, &c., vol. iv. pp. 129, 130.

† Ibid. vol. iv. p. 131.

‡ Ibid. vol. iv. p. 132.

It is unnecessary to adduce farther evidence to prove that the University, "*civitatis veteris Aberdonensis*" possesses all the rights and privileges which are enjoyed by any University in Christendom.

KING'S COLLEGE.

When the University had been in existence for somewhat more than ten years, Bishop Elphinston, the Chancellor, in 1505, founded and endowed, within its limits, a College in honour of the Holy Trinity and the Virgin Mary, to which he gave the name of St. Mary's College ("*sub vocabulo Sanctæ Mariæ in nativitate*"). It is designated in the Charter of Foundation (17th Sept., 1505) "*ecclesia Collegiata seu Collegium*," and was to consist of thirty-six members, of whom four were to be Doctors of Theology, the Canon Law, the Civil Law, and Medicine, respectively, or Licentiates of these Faculties, "*cum rigore examinis, si in eisdem facultatibus doctores commode haberi non possunt*," with two Masters of Arts, of whom the one was to be Sub-Principal. After providing for the erection of the College, and mentioning the number of members of which it was to consist, the Charter proceeds:—"Prima erit Magister in Theologia, si commode haberi potest; alioquin in eadem facultate licentiatus, cum rigore examinis ejusdem, qui infra annum ad magistratus gradum in eadem facultate se faciat promoveri; qui et Principalis dicti Collegii appellari debeat . . . Secunda, Pontificii juris Doctor; Tertia, juris Civilis Doctor; Quarta, in Medicinis Doctor; aut in eisdem facultatibus licentiati, etiam cum rigore examinis, si in eisdem facultatibus doctores commode haberi non possunt; qui similiter licentiati infra annum ad doctoratus in eisdem facultatibus gradus ascendere teneantur; Quinta, in Artibus Magister, ac in eisdem actu Regens, qui et Sub-Principalis dicti Collegii dici debeat."* The provision made for the support of the various members is then specified, and the duties to be performed by each are enumerated.

The Erection was ratified by a Bull of Julius II., dated 19th April, 1506; † and on the 3d of May in the same year, the same Pontiff issued a second Bull, empowering the Bishop, as Chancellor of the University, or his Deputy, to promote to the Degrees of Doctor, Master, Bachelor, and Licentiate, in the several Faculties,

* Evidence, &c., p. 135.

† Ibid. pp. 139, 140.

the members of the College who had completed their period of study, "*donec debitus numerus doctorem et magistrorum ibidem fuerit.*"* The Charter was confirmed, and the various rights, privileges, and bequests made to the College were ratified by James V., in a Charter dated "*Apud Aberdene, 7th February, 1527.*"†

Bishop Elphinston, in the original Charter of Foundation, had specially reserved to himself, during his life, the right of interpreting the various provisions of the Erection, and of making such alterations, additions, or curtailments as he might, from time to time, consider necessary. "*Insuper omnium et singulorum articulorum præscriptorum interpretationem, additionem, diminutionem et declarationem, totiens quotiens opus nobis visum fuerit, pro toto tempore vitæ nostræ, specialiter nobis reservamus.*"‡ Accordingly, it appears that before his death, which took place 25th Oct. 1514, the constitution of the College had undergone various changes, chiefly in the way of extension and improvement, which changes were at the time in operation, but had not obtained the sanction of the Pope, who was then the sole source of University law. In consequence, therefore, of a requisition from the Principal and Masters, "*Universitatis Studii generalis villæ veteris prope civitatem Aberdonensem,*" Pope Clement VII., in 1526,§ addressed a Rescript to Bishop Dunbar, the occupant of the See, and the Executor of Bishop Elphinston, empowering him to alienate to the College, in perpetuity, certain possessions and revenues which the Founder had, during his lifetime, assigned to it, but for the alienation of which sufficient documentary evidence did not exist; and to carry into effect certain alterations in the original Deed of Foundation, which, though made by the Founder, had not been incorporated in the Statutes, nor received the sanction of the reigning Pontiff. This gave rise to the new Erection, the Constitution by which the College has since been governed; which was prepared by the Bishop, and executed Dec. 18, 1529.|| By this Deed the number of members was increased to forty-two, various additions were made to the revenues, the internal government was improved, and the system of education was rendered more definite; but none of the rights, privileges, or immunities previously enjoyed by the College were recalled. The new Constitution is recognised in a Brief of Pope Paul III., dated 11th Oct. 1538; ¶ and Queen Mary,

* Evidence, &c., vol. iv, p. 140.

† Ibid. p. 141.

‡ Ibid. p. 138.

§ Ibid. pp. 140, 141.

|| Ibid. pp. 141-151.

¶ Ibid. pp. 151, 152.

in a letter, dated "at Aberden," 2d November, 1562,* "declares her intention with respect to the College," and "guards its possessions 'and privileges by the protection of her royal prerogative.'" The change from Popery to Protestantism which had taken place rendering new statutes necessary, the original Foundation Charter was acknowledged and ratified by the Scottish Parliament in 1617,† by which certain "annualrents" were bestowed on it; and again, in an Act of 1633, which confirmed the preceding, and still farther increased the revenues of the College. It is worthy of remark, that in this last Act it is for the first time designated "King's College," the expression "University and King's College" being repeatedly employed.‡ It will contribute to the object which we have in view to quote from the Act of 1633 the following proof of the extensive privileges which the University and King's College was at this time acknowledged to possess:—

"In the Parliament haldin at Edinburgh, upon the twenty-aught day of June, One thousand six hundred and thirty-three years. Our Sovereine Lord and Estates of this present Parliament, Ordains an Ratification to be maide thairin. makand mention, That his Majestic . . . understanding that the said University and College (our Sovereine Lord's University and King's College in Auld Aberdene) was of auld foundit and erectit be umquhill King James the Ferd of worthie memorie, for serving the north parts of this reahne, and indewit be him with most ample privileges of teaching and professing Divinity, Canon and Civile Laws, Medicine, Philosophie and all other lawfull faculties and liberal sciences; and also giving of Degrees of Baccallawreat, Licentiat, and Doctorat, to these that are worthy and capable of the said Degries, in all and sundry the faeulties and sciences above exprest, with full power and liberty to the persons promotit and graduated in the samyn, to reid, teich, do and exercee all things whatsoever the persons promoted to the same degrees within the University of Paris, in the University of Bononia, or any

* Evidence, &c., vol. iv. p. 152.

† Ibid. pp. 152, 153.

‡ The exact date of this new designation it is not necessary for us to fix. That it was, locally at least, applied to the College at a very early period, we have a proof in the fact that Hector Boecius, the first Principal, whose signature is attached to the new Erection, dates the Dedication of his History to the Archbishop of St. Andrews, "*Ex Regali Collegio Aberdonensi, ad Kalendas Maias, Anno salutis Christiane sexto et vigesimo supra millesimum quinquagesimum.*"

' other University whatsoever, may do or exerce, both in the
 ' University quhair they receivit thair degries, and also in what-
 ' somever other University, *ubicunque terrarum sine ullo alio*
 ' *examine vel approbatione* . . . and that the saids University and
 ' King's Colledge of Auld Aberdene was of auld giftit and dottit
 ' be the said umquhill King James the Feird of worthie memorie,
 ' and by the Bishops of Aberdene, and certain others his Majesties
 ' subjects; . . . Thairfoir our said Soverane Lord, . . . Ratificas,
 ' allows, approves, and, for his Hienes and his successoris, per-
 ' petnally Confirms, all and sundry the forsaid auld foundations of
 ' the saids University and College of Auld Aberdene, with the haile
 ' richts, tittles, privileges;" . . . "and wills, grants, and declares,
 ' that the said University and College sall enjoy the same;" . .
 "privileges, &c.;" . . . "quhilks at ony time the saids University
 ' and College, or any other University or College within or without
 ' this realme bruiks or enjoys, or has bruiked and enjoyt in ony time
 ' bygone, or may bruik and enjoy it by vertue of their rights and
 ' donations grantit unto them heretofore." *—Then follows that
 part of the act referring to the Dean of Aberdeen, the Sub-Cantor,
 &c. The preceeding extract forms a striking contrast with the
 scanty measure which, forty years before, had been dealt out to the
 future rival Seminary in New Aberdeen.†

With these alterations, the University and King's College re-
 mained as instituted by the original Deed of Foundation, enjoying
 all its privileges and immunities, and continuing as a separate and
 independent Institution, till the time of Charles the First. In con-
 sequence of the revenues of the suppressed Sees having fallen to the
 Crown, His Majesty was induced, "with the view of promoting piety
 and religion," to issue a Charter, uniting the University and King's
 College and Marischal College, under the title of "King Charles'
 University of Aberdeen," to which more partienlar reference will
 be made hereafter.

MARISCHAL COLLEGE.

Marischal College was founded by George, Earl Marischal, under
 Royal authority, in 1593, and designated a Public Gymnasium
 ("publicum Gymnasium"); and the Founder assigns, as his reason

* Evidence, &c., vol. iv., pp. 153, 154.

† See Ratification, &c., Evidence, &c., vol. iv., p. 239.

for establishing it, the deficiency "of literary and Christian education," which then existed in the North of Scotland. The College was to consist of a Principal, three Teachers or Regents, six Alumni, and others of inferior rank, for managing the affairs, revenues, &c. "Georgius Comes Mariscallus, Dominus Keyth et Altrie, omnibus et singulis vere Christianis, æternam in Domino salutem." After a statement of the reasons which induced him to found the College, the Charter continues, "Itaque quod olim in hoc regno Scotiæ, ut alibi passim, factum est, Reges, Principes, Proceres et Episcopi, Ecclesiæ, Patriæ et Reipublicæ imprimis studiosi, Collegia instituere et condidere, domicilia Musis sacra, et quasi Seminaria, ubi juvenus pie et ingenue educaretur, in bonarum literarum atque artium studiis, qui inde in omnes Reipublicæ partes, ut commodum videretur, transferri possint, sive ad propagandam Divini Verbi prædicationem in ecclesiis, sive ad pueritiam rectius instituendam." . . . "Nos eadem inducti ratione . . . instituere volumus Aberdoniæ, quæ Nova dicitur ad Veteris discrimen, . . . publicum Gymnasium, in ædibus quondam Franciscanorum, quarum translatio in hunc usum maxime opportuna et commodissima visa est, ubi et cæteris artibus humanitatis, ipsaque Philosophia et sinceriore pietate, maxime instituaturs atque erudiatur juvenus, idoneis et doctis tradita præceptoribus, quibus nostro beneficio dabuntur stipendia quæ convenient. Itaque donamus et concedimus, &c."* After granting certain lands to the College, the Charter goes on to designate the members of whom the Gymnasium was to consist,—“Gymnasiarcham probum et pium hominem imprimis esse oportet, cui tota Academia et singula ejus membra curæ sint.” . . . “Is in sacris literis probe instructus, ad aperienda fidei mysteria, et reconditos divini verbi thesauros, idoneus; linguarum etiam gnarus et peritus esto, imprimis vero Hebraicæ et Syriacæ quam propagari cupimus; in singulas septimanas, die Lunæ, in Sacris Literis doceat horam unam; idem post octo acroamaticos libros, quos tertius Regens explicabit, reliquam physiologiam omnem e Græco Aristotelis contextu enarrabit, cui addet brevem anatomiae explicationem: idem geographiam, chronologiæ et astronomiæ principia proponet. Hebraicam insuper grammaticam, cum aliqua præceptorum praxi, adjunget. Post confectum studiorum curriculum, pileo magisterii donabit idoneos . . . Proximus post Gymnasiarcham Regens arith-

* Evidence, &c., vol. iv., p. 235.

' meticæ et geometriæ elementa selectiora, ex Aristotelis libris
 ' Ethicôn et Politicôn e Græco contextu explicabit; quibus et
 ' Ciceronis libros de Officiis, ad mores melius informandos, et
 ' linguam Latinam locupletandam adjunget; et sub anni tertii
 ' finem, Aristoteliei Organi Physici aeroamaticos libros interpre-
 ' tabitur. Tertius ordine Organum Logicum, et præceptorum
 ' inventionis et judicii praxin, ex optimis utriusque linguæ au-
 ' thoribus, docebit, adolescentes tum scribendo tum declamando
 ' exercebit, ut in utriusque linguæ facultate pares progressus
 ' facere possint. Quartus, qui et infimus, Græcæ linguæ institu-
 ' tionem profitebitur, addita enarratione quam facillimorum au-
 ' thorum utriusque linguæ; eodemque frequenti styli exercitio,
 ' sex primis mensibus Latine compositioni, reliquis sequentibus
 ' Græcæ scriptioni assuefaciat, quibus adjunget breve compendium
 ' aliquod inventionis et judicii Logiei." * Next follows a state-
 ment of the manner in which the Principal and Regents were to be
 elected and admitted, and of the system of education which they
 were to adopt, after which the Charter continues,—“ Singulis quo-
 ' que annis ordinum promotiones, per gradus progressionis, fieri
 ' volumus, ita ut primi ordinis studiosi ad secundum transeant,
 ' secundi ad tertium, tertii ad quartum, quarti denique, absoluto
 ' studio philosophico, Laurea Magisterii donentur. In quibus gra-
 ' dibus hoc diligenter caveatur, ne quisquam indignus promotione
 ' in superiorem ordinem transeat, nisi justo examine per Decanum
 ' Facultatis, Gymnasiarcham, tres Regentes, Præceptores Scho-
 ' larum veteris et novæ Abredoniæ, aut eorum alterum, ad id
 ' juratos publicæ omnes, prius habito." †

Thus the new Seminary of Education was, according to the
 original Charter of Foundation, to consist of a Chancellor, a Rector,
 a Dean of Faculty, a Gymnasiarch, and three Preceptors or Regents.
 1st. The Gymnasiarch or Principal, who was to give instructions in
 Sacred Literature and two of the Oriental Languages; to explain the
 Principles of Geography, Chronology, and Astronomy, and occasion-
 ally to teach Theology, and to give a short explanation of Anatomy
 and Physiology: 2d. Three Preceptors or Regents, the first of
 whom was empowered to teach the elements of Arithmetic and
 Geometry, along with Aristotle's Ethics and Politics; the second
 was to instruct the pupils in the higher departments of Latin and
 Greek, and in the Principles of Logic; the third, who was the
 lowest, was to teach the Elements of Greek and Latin, besides giving

* Evidence, &c., vol. iv., p. 236.

† Ibid.

a brief account of the Elementary parts of Logic : and the Principal, after the students had completed their curriculum of study in the departments taught by himself and the Regents, as already mentioned, was to promote them to the Degree of Master of Arts. The Earl Marischal reserved to himself the nomination of the Regents, who were strictly prohibited from assuming the office of Rector or Dean of Faculty. The Dean of Faculty was to be elected by the Rector, Chancellor, Gymnasiarch, three Preeptors, and the Minister of New Aberdeen, it being indispensable that the Gymnasiarch and the Minister of New Aberdeen should always be present at the election ; and was invested with the privileges and duties which were understood to belong to the Dean of the Faculty of Arts in the University of St. Andrews or any other University. “ Vir sit pius, literatus, nec tantum in
 ‘ humanioribus (quas vocant) disciplinis, sed etiam in omni philoso-
 ‘ phia versatus ; qui annuis examinationibus et promotionibus intersit
 ‘ et præsit, et ab examinuatoribus jusjurandum fidelis operæ, ea in
 ‘ re præstandæ, exigat ; eam doctrinæ et diligentia Præceptorum
 ‘ habeat ; videat ne ejus neglectione Academia quid detrimenti
 ‘ capiat ; in electionibus incorruptum suffragium, et e re publica
 ‘ ferat, ea denique omnia exerceat, quæ in Andreana aliave Acade-
 ‘ mia ad Decani Facultatis liberalium artium munus officiumque
 ‘ pertinere intelliguntur.”*

This Deed of Foundation was approved and affirmed by the General Assembly, which met soon after at Dundee ; and in the same year (1593) a Deed of Confirmation was issued by Parliament, which granted to the College all freedoms, franchises, liberties, free privileges, and jurisdiction “ of ane frie College ” within the realm. “ Oure Souerane Lord and estaitis of this present Parliament,—
 ‘ Understanding that George Erll Merschell, Lord Keith, &c., hes
 ‘ baithe foundit and erectit ane College w^{thin} the burgh of New
 ‘ Abirdene, and dotit the same wth dyvers rentis and patrimony of
 ‘ his awin propre landis, ffor advanceing of the qlk also the provest,
 ‘ ballies, counsaill and comwnitie of the said burgh, hes gevin to the
 ‘ said Erll the place, kirk, elois, and zard, qlkis appertenit sumtyme
 ‘ to the gray freiris of Abirdene, to be annext to the said college,
 ‘ as at mair lenth in the lettrez of fundatioun and erectioun of the
 ‘ said college is contenit : Thairfoir his Hienes and estaitis
 ‘ foirsaidis, Ratifies, appreis, and confermis the said fun-

* Evidence, &c., vol. iv. p. 238.

‘ datioun and erectioun, qlk is of the dait the
 ‘ day of Aprile, j^m. v^c. foirscoir threttene zeiris, wt. all the
 ‘ clausis, articles, heidis, and conditionis thairin contenit: And
 ‘ farder, gevis and disponis thairto all fredomes, franchises, liberties,
 ‘ frie privilegis and jurisdiction that to ane frie college w^{thin}
 ‘ this realme, be law and practik, is knawen to apertene: Provyd-
 ‘ ing alwayis, that the masteris, memberis, students, bursaris,
 ‘ and haill inhabitantis of the said college is and salbe in all
 ‘ tymes heireafter subject to the jurisdictionn of the provest,
 ‘ ballies, and counsaill, of the said burgh of Abirdene, in all
 ‘ things to be done or commitit be thame outw^t the wallis of the
 ‘ said college, and w^{thin} the territoris or fredome of the said
 ‘ burgh.” * A Charter of Ratification and Novodamus was, in
 1623, granted by the then Earl Marischal, confirming the Deed of
 Foundation by his predecessor, but withdrawing certain lands and
 revenues which had been originally assigned to the Institution:—
 “ In omnibus punctis, articulis, conditionibus et circumstantiis
 ‘ dictæ foundationis, forma pariter et effectu, in eadem late expressis;
 ‘ et hanc nostram confirmationem tanti volumus esse roboris et
 ‘ momenti ac si dicta fundatio et erectio per nos, ac cum nostro
 ‘ consensu, facta, data et concessa fuisset, ac si eadem hic ad ver-
 ‘ bum inserta esset.” †

Under these several Deeds, Marischal College continued as a
 separate and independent Seminary, or Gymnasium for conveying
 instruction in the Languages, Arithmetick, Geography, Logic,
 Ethics, and Politics, and with the power of promoting the deserv-
 ing Students to *Degrees in the Arts*.

To the Teachers already mentioned, another Regent was added
 a few years after the foundation of the College. In 1613, a Pro-
 fessorship of Mathematics was instituted; and one of Divinity in
 1616, at which time it is supposed that the Principal ceased to
 give instructions in the branches enumerated in the Deed of Foun-
 dation. ‡ A Professorship of Medicine was instituted about the
 beginning of the eighteenth century.

We have thus far briefly traced the early history of the two Institu-
 tions; and, before proceeding to narrate an important event in their
 subsequent history, let us advert to the points which have thereby
 been established.

* Evidence, &c., vol. iv. p. 239.

† Ibid. p. 239.

‡ Report, &c., by the Royal Commissioners, 1831, p. 314.

It is universally admitted that, by the original Deed of Foundation, as well as by the subsequent Bulls and Charters of Confirmation, the University and King's College enjoyed all the privileges possessed by any other University, with full power to institute all the Faculties, and to confer Degrees in all these Faculties.

With regard to Marischal College, it is evident, from the whole tenor of the Deed of Foundation, that the intention of the Founder was to institute merely a Public Seminary ("publicum Gymnasium") for the instruction of youths in the Languages, and the other branches of Polite Literature, together with certain departments of knowledge to which he attached great value; with power to the Gymnasiarch and Regents to promote to Degrees in Arts those who excelled and were considered worthy of this distinction. This is expressly stated in the original Deed of Foundation, and is repeated in the Charter of Ratification. The word *Doctor*, or *Doctoratus*, does not occur in the Charter of Foundation, nor in any of the Documents confirmatory of it, nor is any provision made that the Principal or Regents shall be members of a University, or hold University honours. Now that the Principal has ceased to perform the duties originally assigned to him, there seem to be no specific qualifications required in the man who is to hold that office.* Besides taking a general superintendence, he is merely required to promote to the degree of Master of Arts the Students who shall have proved themselves duly qualified ("post 'confectum studiorum curriculum, pileomagisterii donabit idoneos"). No other Degree is mentioned in the Charter, nor is allusion made to any branch of knowledge which is not included in the Curriculum of Arts, with the single exception already referred to. In the case only of the Rector and Dean of Faculty is reference made to the practice of other Universities. The former officer is invested with the same powers as the Rector of the University of Glasgow, Edinburgh, or any other; and, with respect to the Dean of Faculty ("Decanus Facultatis"), not only is provision made for his election as an individual office-bearer, but he is expressly identified as to position and official duties with the Dean of the *Faculty of Arts* in the University of St. Andrew's. It is impossible to misunderstand this clause. The Founder ordained that his Institution should contain only one Faculty, and specified the qualifications necessary for the man who was to preside over that Faculty,

* Evidence, &c. vol. iv. p. 297.

as well as the duties which he was to perform. In no Deed, so far as we have traced its history, is Marischal College designated a University, the terms employed being *Gymnasium* and *Academia*; —Faculties of Divinity, Laws, and Medicine, are not mentioned, nor is any power whatever given to the office-bearers to promote to Degrees in these Faculties.

Our argument, however, seems to demand that we extend our enquiry to the Universities of St. Andrew's, Glasgow, and Edinburgh; and we shall, therefore, place before our readers Extracts from the Charters of these Seminaries of learning, containing a distinct enumeration of the several departments of knowledge which they were designed to teach, and in which they possess the privilege of conferring Degrees. We shall thus show more clearly the groundlessness of the claim which Marischal College now makes, and in virtue of which its members have placed it on a level with the Scottish Universities.

St. Andrews—"Benedictus Episcopus," . . . "Ad hunc itaque universalem profectum, studio paternæ sollicitudinis anhelantes, prefatorum Regis, Episcopi, Prioris, Archidiaconi et Capituli devotis in hac parte supplicationibus inclinati, Studium generale hujusmodi in dicta civitate, auctoritate Apostolica, præsentium tenore, institutum, fundamus, ac etiam ordinamus; dictisque Regi, Episcopo, Priori, Archidiacono et Capitulo, auctoritate prædicta, de specialis dono gratiæ, concedimus, ut in eadem civitate de cætero sit Studium generale, illudque perpetuis futuris temporibus in ea vigeat, in Theologiæ, ac Juris Canonici et Civilis, necnon Artium, et Medicinæ, et aliis licitis Facultatibus quibuscunque. Et in super civitatem et Studium supradicta, ob profectus publicos quos exinde venturos speramus, amplioribus honoribus prosecui intendentes, auctoritate prædicta statuimus et ordinamus, ut quotiescunque aliqui qui, processu temporis, in eodem Studio in dictis facultatibus bravium assecuti, sibi docendi licentiam, ut alios erudire valeant, petierint impertiri, possint examinari diligenter ibidem, et in iisdem facultatibus titulo Magisterii et Doctoratus magistrari et doctorari: quodque quoties aliqui, in aliqua vel aliquibus facultatum ipsarum in dicto Studio, fuerint magistrandi seu doctorandi, præsententur Episcopo S. Andreæ pro tempore existenti, vel ejus vicario," * &c.—Again, "illos (Studentes) quos

* Evidence, &c., vol. iii. p. 171.

‘ idoneos repererit, petito secrete, pure, et bona fide, eorundem Magistrorum et Doctorum consilio, (quod utique consilium, in ipsorum consulentium dispendium et jacturam, sub debito juramenti super hoc præstandi, tam ab Episcopo, seu deputando ab eo, ac vicario prædictis, quam a singulis Magistris et Doctoribus, hujusmodi revelare quomodolibet districtius prohibemus), approbet et admittat, eisque petitam licentiam largiatur; aliosque minus idoneos, postpositis odio, gratia et favore, nullatenus admittendo. Super quibus Episcopi, et deputati ab eo, ut præmittitur, ac Vicarii, et Magistrorum ac Doctorum prædictorum conscientias oneramus, volentes ut illi qui in præfato studio magistrati seu doctorati fuerint, in eo et aliis Studiis facultatum hujusmodi, legendi et docendi, absque approbatione alia, liberam habeant facultatem.” *

Glasgow—“ Nicolaus Episcopus, servus servorum Dei, ” . . . “ in eadem civitate (Glasguensi) generale Studium auctoritate Apostolica erigimus et statuimus; et etiam ordinamus, ut in ipsa civitate de cætero Studium hujusmodi perpetuis futuris temporibus vigeat, tam in Theologia ac jure Canonico et Civili, quam Artibus, et quavis alia licita facultate.” † No mention is here made of Medicine, as in the original erection of the University of St. Andrews; but it is implied in the designation “quavis alia licita facultate.” Then follows the clause which empowers the Bishop of Glasgow, as Chancellor, or his Official, to promote to Degrees in the various Faculties: “quodque illi qui processu temporis bravium meruerint in facultate illa in qua studuerint, obtinere, ac docendi licentiam ut alios erudire valeant, necnon Magisterii seu Doctoratus honorem petierint eis elargiri, per Doctorem seu Doctores, ac Magistrum seu Magistros facultatis ejusdem, in qua examinatio fienda fuerit, Episcopo Glasguensi,” &c. ‡

Edinburgh.—The Deed of Foundation by King James VI. is not so full and explicit as those of the two Universities already mentioned. Still it is sufficiently definite to shew that all the Faculties were designed to be included. After enumerating various grants of land, it proceeds,—“Ac quia intra privilegia et libertatem dicti nostri burgi nunc diversa extant vasta et spatiosa loca, . . . maxime apta et commoda pro constructione domorum et ædificiorum, ubi Professores bonarum scientiarum et literarum, ac

* Evidence, &c., vol. iii. p. 172. † Ibid. vol. ii., p. 229. ‡ Ibid. vol. ii., p. 229.

‘ Studentes earundem, remanere, et suam diuturnam exercitationem
 ‘ habere poterint, . . . ideo nos enixe cupientes, ut in honorem Dei
 ‘ et commune bonum nostri regni, literatura indies augeatur, volu-
 ‘ mus et concedimus, . . . ædificare et reparare sufficientes domos
 ‘ et loca pro receptione, habitatione et tractatione Professorum
 ‘ scholarum grammaticalium, humanitatis et linguarum, Philo-
 ‘ sophiæ, Theologiæ, Medicinæ, et Jurium, aut quarumcunque alia-
 ‘ rum liberalium Scientiarum.” *

How different from these, and from the Deed of Foundation of King’s College, is that of Marischal College? In these, all the Faculties are enumerated; whereas in the Charter of Marischal College we find the Faculty of Arts alone mentioned. No doubt, the Principal is required to give instructions in Sacred Literature, and to deliver to the Students a short explanation of Anatomy, but it is not necessary that he shall have a Degree in Divinity or Medicine; and surely no one will for a moment believe, that by this anomalous provision in the Charter, Faculties of Divinity and Medicine were instituted? Even the erection of Chairs of Divinity and of Medicine is no proof that the College possesses the right of promoting to Degrees in these Faculties. The utmost that can be advanced on this ground is, that the Professors, when appointed, opened classes, and that the Universities of Scotland did not adopt the necessary means for preventing them from assuming the power which they now unwarrantably exercise. The College is even yet without a representative in the Faculty of Laws.

UNION BETWEEN THE UNIVERSITY AND KING’S COLLEGE AND MARISCHAL COLLEGE.

We have now arrived at an important era in the history of the two Institutions; and, as they were for some time incorporated by Act of Parliament, it is necessary that we should take up the history of both at the same time.

After the abolition of Episcopacy in Scotland, the revenues of the different Sees devolved on the Crown. Charles the First, who was at the time the reigning Monarch, influenced by a desire to promote the welfare of the Universities and Colleges in Scotland, which are designated “the seminaries of piety and religion,” resolved,

* Evidence, &c., vol. i., p. [7.; Acts Scot. Parl., vol. iv., pp. 670 and 671.

to apply a certain portion of these revenues to their better support. After mature deliberation, he executed Charters by which he united the University and King's College and Marischal College as one University to be entitled "King Charles' University of Aberdeen;" the two Colleges remaining separate and independent as Colleges. "Carta Caroli I^{mi} Regis Collegio Mariscallano (8th Novemb., 1641.)

"Carolus, Dei Gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, fideique defensor;" . . . "Mandavimus quibusdam ex nobilitate, aliisque, perlustrare et inquirere de præsentî statu Universitatis Veteris Aberdoniæ, et nostræ Acedemiæ ejusdem, nec non novæ Acedemiæ Aberdonensis, Acedemiæ Mariscallaniæ nuncupatæ, et quod eis in posterum suppeditandis et auxiliandis expediret: Qui, inquisitione habita, eandem ad nos remittebant: per quam compertum est, quod præter et ultra præsentis redditus eorundem, competens sustentatio professoribus, et fundatio personis Universitatis et Acedemiarum prædicit. respective, in moderata via, extendet ad summam quingentarum librarum monetiæ sterlinæ aut eoeira . . . Igitur Nos, eum avisamento et consensu . . . Univimus et ereximus, tenoreque præsentium unimus et erigimus dietas Acedemias veteris et novæ Aberdoniæ in unam Universitatem, omni tempore futuro Universitatem Caroli Regis de Aberdene nuncupandam; Et dedimus, concessimus, fundavimus, mortificavimus et disposuimus, tenoreque præsentium damus, concedimus, fundamus, mortificamus et disponimus dietæ Universitati Veteris Aberdoniæ, de dictis Acedemiis veteris et novæ Aberdoniæ consisten., nunc in junctam Universitatem unit., ac Principalibus, Professoribus, Regentibus aliisque membris dietæ junctæ Universitatis, secundum distributionem seu divisionem subscriptam." *—Then follows that part of the Charter which enacts that, of the revenues then conferred on the united University, two-thirds should be appropriated to King's College, and one-third to Marischal College, a principle which was adhered to in all the other public Documents connected with the union. The internal economy and privileges of the two Institutions were left untouched. No privileges were withdrawn from the University and King's College, and none were *de novo* bestowed on Marischal College, farther than this, that it now formed an integral portion of King Charles' University of Aberdeen.

* Evidence, &c., vol. iv. p. 240.

This Charter was ratified by an Act of the Scottish Parliament, 17th November, 1641. *

Another Charter to the same effect was granted in the beginning of 1642. "Charles R., Our Soveran Lord, considering that the estatutis of Bischopricks and benefites thair of, are, be the lawis and actis of parliament of this kingdome, abolished and suppress, and therby the fruitis and rentis perteing thairto ar fallen in his Majestie's handis and at his Majestie's disposing; and his Majestie, out of his religious and pious dispositione, being resolved to apply sutch pairt of the rentis of the said Bishopricks and benefites thair of as sall be found necesser for the help and suplie of the Universities and Colleges within this his Majesties antient kingdome, whilk are the seminaries of pietie and religioun, Was pleased to give warrand to certane of his Majestie's nobilitie and others, to survey and take notice of the present estait of the University of Old Aberdene, and King's College thair of, and als of the New College of Aberdene, callit Merschall Colledge, and what wis requisit for supplie and helpe of the samyn in tyme coming: wha after tryall hes maid report to his Majestie, be the whilk it is fund that." . . . "Thairfore his Majestie, with advyse and consent of his Hienes' trest Cusings and Counsellors" . . . "Ordaines ane Charter to be maid, past, and expedie under his Majestie's great seall in dew and competent forme, uniting and erecting, lykas his Majestie be thir presents units and erects, the saidis Colledges of Old and New Aberdene in an Universitie, to be callit in all tyme cuming King Charles' Universitie off Aberdene, &c."† Then follows the division of the grants as in the other Charter,—no allusion being made to additional privileges enjoyed, or to be enjoyed, by Marischal College.

The members of King's College seem to have acted according to the provisions of these Deeds of Union; for when, in consequence of the abolition of Episcopacy, the office of Chancellor could not be filled in terms of the Original Charter, they, in 1643, summoned the Principal and Professors of Marischal College to co-operate with them in the election of a Chancellor of King Charles' University. The Principal and Professors of Marischal College, however, refused to attend, and thereby declined to assist in giving effect to the recent Charters of Union.‡ The Union was not-

* Evidence, &c., vol. iv. pp. 156 and 157.

† Ibid. p. 155

‡ Report, &c., p. 308, and Evidence, &c., vol. iv. p. 182.

withstanding nominally maintained. We find it recognised in "An Ordinance for the better support of the Universities in Scotland," issued by Cromwell in 1654*; and in an "Order for payment of Augmentation to the College Stipends," dated 2nd September of the same year.† A similar recognition of the Union occurs in a "Charter of Mortification in favour of the University of Aberdeen, of superiorities, lands," &c., granted by the Lord Protector in 1658.‡ These three Documents relate merely to the granting of certain funds for the better support of the University; and preserve the same proportion in the division of them between the two Colleges, which had been specified in the Charter of Charles I.

For some reason which is not explained, the members of Marischal College appear from the first to have declined to attend the meetings, when regularly summoned. In November, 1642, Dr. Patrick Dun, Principal of Marischal College, was present at the election of the Rector of King Charles' University, and this is the only instance, so far as we have been able to discover, in which Marischal College sent a representative to any University meeting. The election of Rector for 1641 took place March 10th, previous to the passing of the Charter of Union; in the minute for 1643 no mention is made of Marischal College, or of King Charles' University; the minute for 1644 has not been preserved; and, in that for 1645, it is stated that "the Principall and remanent Masters and Members of the Marischall College of New Aberdeen had been lawfully required to be present," § but did not attend. The preceding is the last minute in which any reference is made to the members of Marischal College. It may, therefore, we think, be legitimately inferred, that the Union had disappointed the expectation of its promoters, and was consequently allowed practically to fall into disuse. Perhaps the members of Marischal College disapproved of the principle on which the additional endowments were apportioned, and for this reason embraced the first opportunity which presented itself of obtaining the restoration of their former independence.

The first Parliament of Charles II. met at Edinburgh, January 1st, 1661; and on the 22d of February, the first of four Commissions for visiting the Universities and Colleges of Scotland was

* Evidence, &c., vol. iv., p. 159.

† Ibid, p. 160.

‡ Ibid. pp. 160, 161.

§ See Minutes in Appendix 1.

appointed. * The minutes of Parliament are too meagre to enable us to trace the relations of cause and effect; but we find that, on the 20th of March, the Parliament agreed to a "Ratification in 'favour of the Colledge of New Aberdein," confirming the original Foundation and Erection, along with the "Act of Ratification," by James VI., and "of new" conferring on it the freedoms and privileges which it formerly enjoyed; in short, restoring it to the position which it occupied previous to 1641.† We are warranted in concluding that this "Ratification" was passed at the instance of the members of Marischal College, by the circumstance that the "Commissioner of Aberdein," on the same day, lodged a formal "Protestation" against it.‡ This Act was of itself a virtual rescinding of the Act of Union. All doubt, however, was removed by the "General Act Rescissory," which was passed March 28th, "Rescinding and Annulling the pretendit Parliaments kept in the 'years 1640, 1641, 1644, 1645, 1646, 1647, and 1648, and all acts 'and deids past and done in them; and declaring the same to be 'henceforth voyd and null."§ This sweeping measure removed every trace of King Charles' University; and even the temporary exception of private Rights and Securitics, had the re-establishment of Episcopacy left any remaining, expired at the end of the "next 'Session of Parliament."

The members of the University and King's College seem to have been less impatient of the change (if they had in reality experienced any) which had been effected in their position by the Union; for we find that it was not till nine years afterwards (1670), that a similar Act of Parliament was passed in their favour. The delay may perhaps be partly accounted for by a general "Ratification in 'favour of the City and University of Old Aberdein of their rights and privileges," which was passed May 20th, 1661. || The Act of 1670 "confirms all the acts and grants which had been 'made to the King's College and University, as a separate literary 'Institution; details its foundation by James IV., the purposes of it, 'and the period for which it had subsisted; and ratifies, approves, 'and confirms the old Foundations, the rights and privileges of the 'said College and University; and is thus virtually a rescinding of 'the Charter and Act of Union."¶ The following are extracts from the Acts referred to:—

* Acts of the Scottish Parliaments, vol. vii. pp. 37, 38; and Appendix p. 76.

† Ibid. pp. 69, 70.

‡ Ibid. p. 70.

§ Ibid. pp. 86, 87.

|| Ibid. pp. 214, 216.

¶ Report, &c., p. 308.

Act of 1661.—"Our Soverane Lord, with advice and consent of his Estates of Parliament, Ratifies and approves, and for his Heires and his successors perpetually confirms the fundation and erection of the Colledge of New Abirdein, made by the deceast George Earle of Marshall, Lord Keith, and donation of the same, with diverse rents. . . . Together with the act of ratification of the same made in his Majestie's dearest grandfather, King James the Sext. . . . In all and sindrie the heids, points, clauses, &c., thairin contained. . . . And further, of new Gives and dispones to the said Colledge, Masters and members thair of, all freedoms, liberties, priveledges, and jurisdiction that to any frie colledge within this realme, be law and practick, is knonn to apperteane." * Then follows a grant, "to make such use of the places, church and garden, which had formerly belonged to the Grey Friars of Aberdeen, as the masters and members should think most fit and convenient for the benefit of the said College." †

Act of 1670.—"At Edinburgh, the twenty-twa day of August one thousand six hundred three score and ten years: Our Soverane Lord and the Estaits of this present Parliament, remembering and calling to mind the many acts of parliament be his Majestie's predecessoris, of worthie memorie, in favour of the auld Universities of this realm, . . . and specially within the north parts of this realm, whereof our Soverane Lord's University and King's College in Auld Aberdene, has been special instructor for the space of eight score eighteen years or thereby, since the first foundation of the samin: And understanding that the said University and College was of old founded and erected be our quhile King James the Fourth . . . and endowed by him with most ample privileges of teaching and professing Divinity, Canon and Civil Laws, Medicine, Philosophy, and all other lawful facultys and liberal scienees, and also giving of Degrees, Baccalaureat, Licentiat, and Doctorat, to those that are worthy and capable of the said Degrees, in all and sundry the Faaultys and Scienees above expresst; with full power and liberty to the persons promotit and graduatit in the samyn, to reid, teich, do and exereise all things whatsoever the persons promotit to the same degrees within the University of Paries, in the University of Bononia, or any other University whatsoever; . . . Togidder

* Evidence, vol. iv. p. 241.

† Report, &c., p. 344.

‘ with . . . rights, privileges, liberties, immunities, and exemp-
 ‘ tions of the said University and College, as is at greater length
 ‘ exprest and set down in the first foundations and erections . . .
 ‘ of the dates 1494 and 1497 . . . and our Sovereign Lord . . .
 ‘ being willing be all means possible, sua far as lyes in his Ma-
 ‘ jestie’s power, to promote virtue, advance the saids University
 ‘ and College of Old Aberdeen . . . Therefore our said Sovereign
 ‘ Lord, with advyse and counail of the saids Estates of Parliament,
 ‘ ratifys, allows, and approves, and for his Hienes and his sue-
 ‘ cessors perpetuallie eonfirms all and sundry the forsaid auld
 ‘ foundations of the said University and College of Auld Aber-
 ‘ deen, with haill rights, tittles, privileges, immunitys, exemptions,
 ‘ jurisdictions, freedoms, and libertys of the samin.” *

It is a curious faet, that in neither of the Aets of Parliament from which the preeeding extraets are taken, is any allusion made to the Union, which had nominally been in existenee for twenty years before the first of them was passed. We have already stated that there is not, so far as we are aware, any evidenee of the two Seminaries ever having eo-operated in any University measure, execept in a solitary election of Reetor,—no Chancellor of King Charles’ University having at any time been eleeted, nor any Statutes formed for the regulation of the united body. In faet, the Union seems to have been a nullity, execept in so far as it appeared in the Statute Book; and this eircumstance, independently of the Reseissory Aet of 1661, rendered a formal dissolution of it unnecessary. It is, therefore, not mentioned even in the preamble of the Aet, Mareh 20th, 1661, nor of that, Aug. 22nd, 1670. It is of importanee also to observe, that each of the Seminaries is mentioned under its original designation, and as forming at the time an independent Institution. Marisheal College is designated “the Colledge
 ‘ of New Abirdein, made be the deeeast George Earle of
 ‘ Marishall,” while the University and King’s College is men-
 ‘ tioned as “Our Sovereane Lord’s University and King’s College
 ‘ in Auld Aberdene.” The same distinetion is made between the
 ‘ two Seminaries in the Aet which united them,—“Universitatis
 ‘ veteris Aberdoniæ, et nostræ Aeademiæ ejusdem, nee non novæ
 ‘ Aeademiæ Aberdonensis, Aeademiæ Mariscallaniæ nunenpatæ;”
 and again, “Universitatis et Aeademiarum prædiatarum,” † this

* Evidence, &c., vol. iv., pp. 161 and 162.

† Ibid. p. 240.

last expression being a clear proof that the University was considered as a separate Foundation from both Colleges.

The Act of 1661 restores to Marischal College "all freedoms, liberties, privileges," &c., which it possessed previous to 1641, but is silent as to any additions; no new Faculties are mentioned, nor is the word University found in it, or the power of conferring Degrees alluded to; whereas, in the Act of 1670, the rights and privileges which were restored to the University and King's College, are mentioned in detail, the several Faculties are enumerated, and the power of conferring Degrees in these Faculties is distinctly recognised. No mention is made of an extension of this power, on the part of the University, to the Alumni of Marischal College. And it was perhaps unnecessary, as up till that time, and for nearly a century afterwards, the members were contented with the powers conferred on them by the Deed of Foundation. It is quite clear that a distinction was intended to be kept up between the two Seminaries; the one being a University with a College engrafted on it, and the other a College with limited powers, but, beyond these, possessing none of the rights of a University. Indeed, this distinction is pretty significantly intimated by the following clause in the Act of 1661:—"And farther, of new" (clearly implying that they had been merged in the University by the Union and required to be granted afresh) "Gives and disposes to the said Colledge, Masters and members thair of, all freedoms, liberties, priveledges, and jurisdiction that to any frie colledge within this realme, be law and practick, is known to apperteane." It has been alleged, we understand, that the preceding clause confers on Marischal College the powers of a University, but it is necessary to bear in mind that there is a difference between a College and a University, and that the one may exist without the other. In St. Andrew's there is but one University, though it originally contained three Colleges, and still possesses two. Oxford and Cambridge embrace respectively twenty and thirteen Colleges; and in all, or any one of these cases, the University would remain in possession of its powers and privileges, though all the Colleges ceased to exist. The object of this *pregnant* clause was, we have no doubt, to restrict, and not to extend, the powers of Marischal College. It had existed previously as a "frie Colledge;" at liberty to exercise the

functions conferred on it by the Founder, and ratified by Act of Parliament, and to these it was intended to limit it in time to come. Accordingly, when we turn to the corresponding clause in the Act of 1670, anent the University and King's College, we find it to be the following:—"And wills, grants, and declares that the said ' University and College shall enjoy the samin; . . . and also all ' other privileges, immunitys, freedoms, and exemptions whilk at ' any time the said University and College, or any other University ' or College within or without this realme bruiks and enjoys, or ' has bruiked and enjoyt in any time bygone, or may bruik and enjoy," &c. Now, surely, something more is intended here than is implied in the clause respecting Marischal College; the one is full and explicit, the other is significantly brief. Both, however, are easily explicable on the ground which we have stated. An Act of Parliament must be strictly and literally interpreted; and no ingenuity will extract from the words "frie colledge," the powers and privileges of a University. And, besides, privileges and rights are not conferred on a public body by implication; they must be fully and separately expressed; and on this principle alone are we to account for the completeness of the clause in the Act of 1670, and the brevity in that of 1661.

It is evident, therefore, that by these several Deeds the Act of Union was dissolved, and both Institutions restored to the condition in which they were placed by the original Charters of Foundation. That this was the opinion entertained and acted upon at the time to which we refer, we can have no doubt when we find that, in terms of the original Foundation, the Bishop of Aberdeen, immediately after the Restoration, resumed the duties of Chancellor of the University and King's College, and continued to hold that important office till the abolition of Episcopacy in Scotland. The "Antient ' Government of the Church by Archbishops and Bishops," was re-established May 27th, 1662; and, on the 10th of November, 1663, "Alexander, Bishop of Aberdeen, and Chancellor of the University," presided at a meeting for the election of a Rector.* It is unnecessary to add, that he resumed this office in conformity with the original Bull of Pope Alexander VI.

An incidental proof of the truth of our position (but not the less strong because it is incidental) is furnished by the "Act concerning Masters of Universities, Ministers, &c.," which was passed June

* See Minute in Appendix II.

21th, 1662, enacting that no Masters, Principal, Regents, or other Professors in Universities or Colleges within the kingdom, should thereafter be admitted nor allowed to continue to exercise any function within the same, but such as submitted to, and owned the government of the Church by Archbishops and Bishops; and who, having given satisfaction therein to the Bishops of the respective dioceses and Patrons, and having likewise, in their presence, taken the oath of allegiance, should procure their attestation to the same: "That is to say, the Professors and other Masters of ' the Universities of St. Andrewes, Glasgow, and Aberdein, to ' have the approbation and attestation of the Archbishops and ' Bishops, who are the respective Chancellors of the saids Universities; and the Professors and other Masters of the New- ' town Colledge in Aberdein, and Colledge of Edinburgh, to have ' the approbation of the respective Patrons, the Earle of Marishall, ' and Magistrats of Edinburgh and Aberdein, and ane attestation ' and certifeat under the hand of the Bishops of Edinburgh and ' Aberdein rextive, That they have taken the oath of alledgeance, ' and that they are persons who submit to and own the Church ' Government as now settled by law." * This Act, which was passed fifteen months after the "Ratification, &c." to which we have already referred, clearly proves that the "Newtown Colledge" was then considered as separate and distinct from the University, and no longer subject to the jurisdiction of the Chancellor. The Professors and Masters are therefore required to have the approbation of the Patron and the Magistrates of Aberdeen, and an attestation from the Bishop, as Incumbent of the Diocese, but not as Chancellor of the University. The latter conclusion necessarily follows from Marischal College being placed in the same category with the College of Edinburgh, of which there was no Chancellor.†

* Acts of the Scottish Parliaments, vol. vii. p. 379.

† It would be easy to prove from other Acts, Minutes of Parliament, &c., that the same distinction between the University and Marischal College continued to be maintained, but we shall rest satisfied with giving a few references for the use of such of our readers as may feel interested in the question. See "Petition of the Maisters and Members of the Kings Colledge in the Universitie of Abd."—(Acts of the Scot. Parl. vol. vii. Appendix p. 86.) This petition was repeated July 1st, 1695, (vol. ix., pp. 394 and 395); and again Sept. 29th, 1696 (Vol. x. p. 40). On the 17th July, 1695, a "Petition presented by the Principal and Masters of the Marishal Colledge of Aberdeen" was granted and an Act founded thereon passed. (Vol. ix. pp. 463 and 464, and Appendix, p. 123.) The same Petition, with some additions, was again presented August 31st, 1698, and a similar Act was passed (vol. x. p. 168,

No doubt, a grant was made by Queen Anne (May 30th, 1712) of an annual sum of money to the "University of Aberdeen," to be divided in certain proportions between "the Marshall's College" and "King's College." This, however, seems to have been done in compliance with the form adopted during the Protectorate; and does not prove the existence of a union at the time when the grant was made; for in no instance after the date of the Act 1661, restoring to Marischal College its privileges as contained in the Charter of Foundation, do we find any allusion made to King Charles' University. Accordingly, the more recent grants, as that of £1700, 3d January, 1807; and, particularly, the annual grant of £700, 28th January, 1808, are made to the Chancellor, Rector, Principal, and Members of the University and King's College, Aberdeen.

It is freely admitted that, in the Act giving a grant of money, 7th October, 1812, the title "Marischal College and University of Aberdeen" is found; but we cannot admit that Marischal College is thereby constituted, or authoritatively acknowledged to be, a University. The expression is used in answer to a Memorial from individuals calling themselves the "Principal and Professors of Marischal College and University;" and, in ordinary courtesy, the terms employed by the framers of the memorial are repeated in the reply by which the prayer of the Memorial is complied with. It will not surely be argued that, because this phrase is used, in giving a grant of money, the College is therefore invested with rights which its original Charter does not contain; or at liberty to assume the exercise of privileges to which it has otherwise no claim. For the nature of these privileges we must have recourse to the original Charters, and to these alone. On the same principle it might be maintained, that because a public body, from some unknown reason, applies to itself a certain designation, it therefore acquires a right to the designation so assumed, and to all the privileges which that designation conveys. The members of the Society of Advocates of Aberdeen, for instance, have been known by the designation which they now most worthily bear for more than two hundred and fifty years, but it was not till 1774 that they were en-

and Appendix, p. 31.) Neither in these Petitions from Marischal College, nor in the Acts founded on them, is any allusion made (as in the case of King's College) to the University. See also vol. iv. pp. 576 and 577; and vol. xi. p. 444.

titled to use it as a Corporate body. And even now that they are constituted, as a Society of Advoeates, by two Charters of George III., they do not claim the rights possessed by the Faculty of Advoeates in Edinburgh. By a parity of reasoning, we are entitled to maintain that the circumstance of Marischal College having had the designation *University* applied to it in certain Documents which are not enaetive, cannot convey to it any right to assume the name University, or to exercise the rights and privileges which that name implies. We have already proved that, by its original Charter, Marischal College was strictly limited to the Faculty of Arts; that up till 1641, when the Union of the University and the two Colleges was effected, no new powers had been conferred on it; and having now also produced unquestionable evidence that the Union was dissolved, and both Seminaries restored to their pristine state, the subject might be considered as exhausted. There are still, however, a few points to which we must advert.

Previous to the foundation of the College of Edinburgh, we find only three Universities mentioned in Public Acts—St. Andrew's, Glasgow, and Aberdeen;* and, while, in subsequent Acts, the Metropolitan Seminary is recognized as a University, no such recognition is awarded to Marischal College. Thus, in an "Act anent the Universities of St. Andrews, Glasgow, Aberdeen, and Edinburgh" (July 23d, 1644), the College of Edinburgh is so designated, and the benefits of the Act are extended to it, as a University occupying the same rank as the others;† and, though the Act itself was afterwards rescinded, it sufficiently attests the position which the College at that time held. Again, in the "Ratification of the Charter of Erection of the Royall College of Physicians of Edinburgh" (June 16th, 1685), the rights of the Graduates of the University of Edinburgh are specially reserved, along with those of the other three Scottish Universities: "Eadem per præsentibus Specialiter Declaratur absque præjudicio fore Jurium et privilegiorum in favorem Universitatis seu Collegii Andrecapolitani, Glasguensis, Abredoniensis, et Edinburgensis Concessorum et præsentibus et elausulis quibuscunque inibi contentis non obstantibus Licitum et Legitimum erit cuivis in dietis Universitatibus Laurea Doetorandis Libertatem et potestatem habere In dieta

* Acts of the Scottish Parliaments, vol. iii., p. 98.

† Ibid., vol. vi., pp. 129, 130.

‘ Civitate aliisque Loeis suprascriptis praetieandi, &c.’* We have sought in vain for any similar recognition of the claim which has been made in favour of Marischal College. The Royal College of Physicians of Edinburgh was established twenty-four years after Marischal College had ceased to form a part of the University of Aberdeen, and at a time when it did not even profess to furnish instructions in the Faculty of Medicine. It had therefore no rights to protect against the encroachments of the newly-constituted Body. So far as regards rights legally conferred, it remains in the same condition still. We think we may, without fear of contradiction, affirm that it is not recognised as a University, nor as possessing the powers of a University, in any Charter or Act of Parliament, the object of which is to specify, limit, extend, or protect the privileges of the Universities of Scotland.

We have thus shown that Marischal College was not acknowledged as one of the *four* Universities of Scotland before 1641; and that the *fourth* place was occupied by the College of Edinburgh, which, though a Collegiate Institution, possesses, like Trinity College, Dublin, the powers of a University. By the union with the University and King’s College in 1641, Marischal College was not constituted an independent University, it was merely admitted to a participation in the privileges of the University of Aberdeen. Hence Marischal College did not, even during the existence of the union, of itself possess the power of promoting to Degrees in the Faculties so often referred to—such Degrees could even then be conferred only through the Chancellor, Rector, &c. of King Charles’ University; and this privilege ceased when the union was rescinded. Accordingly, it is well known that the number of Universities in Scotland has continued since 1641 to be *four*; and is so specified in all Acts of Parliament, from 1663† down to that of 1836, the last, we believe, in which the Universities are enumerated. Had the case been otherwise, we should, for the last two hundred years, have had *five* Universities mentioned instead of *four*. Hence, though Marischal College claimed a portion of the books from Stationers’ Hall, and subsequently a share of the Compensation Grant when the Stationers’ Act was repealed, the Lords of the Treasury found on investigation that the claim was untenable. To this point we shall return afterwards.

* Acts of the Scottish Parliaments, vol. viii., p. 519.

† Ibid., vol. vii., p. 491; xi., 320 and 402, &c. &c.

We have now to consider some other circumstances connected with the history of the two Institutions, from which it has been inferred that Marischal College possesses the power of conferring Degrees in the Faculties above alluded to ; and from which, also, it has been maintained that Degrees thus conferred convey all the privileges implied by Degrees from the Universities of Scotland. The first of these is:—that Degrees from Marischal College not only pass unchallenged in Courts of Law, but are there held to be valid. The only instance of this sort on record, so far as we know, is that of the disputed election to the vacant Chair of the Civil Law in King's College, in the year 1743. For this office there were two candidates,—Cattanach, a member of the Society of Advocates of Aberdeen, and LL.D. of Marischal College ; and Gordon, a member of the Scottish Bar, but not having a Degree in Laws. The former had the majority of votes ; but Gordon protested against the validity of the election, on the ground that Cattanach had *no Degree*, inasmuch as he had one only from Marischal College ; and being only a member of the Society of Advocates of Aberdeen, a body which does not subject candidates for admission to *an examination*, he (Cattanach) was not a *Licentiate* “*cum rigore examinis*,” and was not therefore eligible : whereas he (Gordon) though without a Degree, yet having passed an examination as a member of the Scottish Bar, was a *Licentiate* “*cum rigore examinis*.” The Court of Session, without reasons assigned in the printed Reports, decided in favour of Gordon ; but, on appeal to the House of Lords, the decision was reversed and judgment given in favour of Cattanach, who was found qualified ; and, as having the majority of votes, to have been duly elected. This case has been considered sufficient to set at rest the question as to the validity of a Degree from Marischal College. Cattanach, by the decision of the House of Lords, was found to be eligible ;—therefore, it is said, the Degree which had been granted to him by Marischal College was really a valid one. On examining the decision more carefully, however, it will be found that it does not in the least affect the question.

According to the Deed of Foundation, the persons to be chosen as Professors of the Civil Law, Theology, and Medicine, must be “*Doctores ; aut licentiati cum rigore examinis habito, si Doctores commode haberi non possunt, qui similiter licentiati, infra annum ad*

‘ Doctoratus gradus ascendere teneantur.’* Now, in deciding on this case, the validity of the Degree from Marischal College was not taken into consideration; for, though Gordon assigned as a reason for the disqualification of Cattanaeh, that “Marischal College ‘ was erected only for the study of the liberal arts, without any ‘ foundation for the Professions of Divinity, Law, or Physiek; ‘ therefore it never could confer Degrees in these Sciences,”—yet it was given and accepted by the Court as a sufficient answer, “that ‘ Marischal College had been used to confer the Degree of Doctor ‘ of the Civil Law, therefore *its powers cannot be called in question ‘ in a suit to which the College is not a party.*” The decision in favour of Cattanaeh was given, therefore, not because he had a Degree from Marischal College, but on grounds from which this plea was excepted. In the printed Reports of the Decisions of the House of Lords, the reasons for judgment are not given: it does not seem at that time to have been the custom to do so. This much, however, is quite evident, that Marischal College was not a party in the suit; and, therefore, the validity or non-validity of the Degree could not be taken into account.†

In the absence of the reasons for judgment, exclusive of the validity of the Degree from Marischal College, which we have shewn was not one of them, it might be fairly presumed, that the status of Licentiate in the Civil Law had, from disuse, ceased to be considered an indispensable qualification, and, therefore, that Cattanaeh, in compliance with the existing practice, was held to be eligible. With regard to the other qualification, the “*Doctoratus*,” it is *not necessary* that the successful candidate be a Doctor of Laws, it is *merely a recommendation*. If a candidate who is not a Doctor is elected, any member has a right to insist on his advancing to the Doctorate; but, in that case, the majority who elected him have likewise the power of conferring the Degree, and would readily do so if required. Accordingly, candidates who had not the Degree of LL.D., have, both before and since that time, been elected to the same Chair, without the validity of the election being called in question by the other competitors;—a clear proof that the Degree was not considered an indispensable requisite.

Another case, we have heard, came before an English provincial court some twenty years ago; in which a Medical Diploma granted

* Evidence, &c., vol. iv. p.

† See Pleadings in Appendix III.

by Marischal College was called in question, and witnesses were summoned from Aberdeen. But here, too, if we have been correctly informed, the question at issue was not the validity of the Diploma as a Degree in Medicine; but whether or not the Diploma, as it was presented in Court, was genuine, and had been granted by the members of Marischal College; in other words, whether the signatures affixed to it were those of the Principal and Professors of Marischal College. Thus again, the power of Marischal College to grant Degrees in Medicine was left untouched.

Again, it has been said that Commissions have been appointed for the purpose of visiting the *Universities* of Aberdeen, and that the Commissioners have presented Reports on the state of *these Universities*, consequently that Marischal College must be a University. To this assumption we reply, as we have already done respecting the Acts of Parliament giving grants of money, that, because Commissioners are appointed to visit and to report on the *Universities* of Aberdeen, it does not follow that there are two *Universities* there.* The terms in which a Royal Commission is

* The practice of issuing Commissions in the most comprehensive terms is of very old standing; and an example quite in point is furnished so early as 1661. On February 22d of that year a "Commission for visiting the Universities and Colledges of Aberdein"† was appointed, at a time when the union was nominally, and perhaps legally, in existence; and when, therefore, there could be but one University. Such, however, is the designation of the Commission; and it is repeated in the Document after the enumeration of the Commissioners; but when the powers entrusted to them are specified, we find the expressions, "the University," "the Colledges thereof," "the Colledge," "the New Colledge," employed, seeming to indicate that the plural number was used merely in compliance with the ordinary practice. The same phraseology is employed in the appointment of the last Commission in 1836 and 1837, and, perhaps, for the same reason. The recent Commission is, in many respects, a remarkable Document. After asserting the undoubted "Right and Prerogative" of the Sovereign to name Commissioners, and to remedy the Irregularities and Deficiencies that exist in the "said Universities of King's College and Marischal College, Aberdeen," it proceeds to "nominate, constitute, and appoint" as Commissioners, along with others, "William Jack, Doctor of Divinity, Principal of King's College, Aberdeen; Daniel Dewar, Doctor of Divinity, Principal and Professor of Church History in Marischal College, in the said University;" . . . "John Abererombie, Doctor of Medicine, Rector of the said University of Marischal College, Aberdeen;" after which it returns to "the said Universities of King's College and Marischal College, Aberdeen." The same phraseology, with the addition, on two occasions, of the important word "of," is repeated in the Commission of 1837. It is hopeless to attempt to analyse such crudities. The only member of the Commission who was at the time connected with a University was Prin-

† Acts Scot. Parl. vol. vii. p. 37.

issued, or the designations contained in the Report of that Commission, do not convey any privileges to the Institutions to which the Commission and the Report refer. The privileges of these Institutions *flow from the Crown*, and are by the Crown conveyed to them by a Royal Charter, expressly specifying the privileges so conferred. Why, it may be asked, when Dr. Fleming, at that time Professor in King's College, asserted in Evidence before the last Royal Commission, that Marischal College had not the power of conferring Degrees except in the *Faculty of Arts*, did the Commissioners not check him if he was wrong? And why did the Principal, the Dean of Faculty, and the Rector of Marischal College, who were Commissioners, and all present, allow his statement to pass unchallenged? Or if they felt themselves bound in courtesy to receive it, why did they not afterwards bring forward oral or written evidence to prove that the Institution of which they were members did possess the power? Why, in short, did they not set the matter at rest by producing the Charter whereby such a power was conferred upon them? We fear these questions must remain unanswered.

“*Notes ordered to be added as part of the evidence of the witness,*”
by Dr. FLEMING, 20th Oct. 1837.

4. “Though accommodations for the Medical School are in the course of erection in Marischal College, that School cannot grant Degrees in Medicine unless by virtue of the power of King's College as a *University*.”

5. “In consequence of the Institution in Old Aberdeen having been a *Studium generale*, or *University*, from its foundation in 1494; recognised as such, distinctly, in the last Parliamentary Charter, 1670; at the Union being one of the *four* Universities of Scotland; and recognised as such to the present day in several Acts of Parliament, it has full power to grant Degrees *in all the Faculties* as ‘the University and King's College of Aberdeen.’”

Principal Jack, and therefore the distinction was withheld from him; the other two gentlemen belonged to an Institution which was not a University, although it is so designated, and accordingly they obtained a prominence to which they were not entitled. It is interesting to observe how soon “the said Universities of King's College, and of Marischal College,” are merged in “the said University of Marischal College,” and how speedily they reappear as “the said Universities of King's College and Marischal College,” and as “the Universities of Aberdeen.” Such a Document as this renders words unnecessary to prove that no argument whatever can be founded on the terms which are employed in it.

“The institution in the New Town was a *College* or *Gymnasium* at its foundation in 1593, a century later than the erection of the *University*. It preserved this character of a College in its last Parliamentary Charter, 1661; and is denominated by an Act of Privy Council of Scotland, 1669* (See Evidence, 223), the ‘Newton College,’ in contradistinction to ‘the University called the King’s College of Aberdeen.’ Although it is acknowledged to have a right to confer *Degrees in Arts*, it is considered as having no authority from Royal Charter, Papal Bull, Act of Parliament, or any other legitimate source of power, ancient or modern, to grant Degrees in Laws, Divinity, or Medicine.”—See *Minute of Evidence*, p. 30, 1838.

Why, we repeat, does this averment still remain uncontradicted? If a Royal Charter, Papal Bull, or Act of Parliament conveying to Marischal College the power of granting Degrees in Theology, Laws, or Medicine is in existence, why is it not produced?

Among the requisitions made by the Royal Commission in 1827 we find the following:—

ORDER XIV.—“A Return of the Number of the different Fa-

* The Act of Privy Council, to which Dr. Fleming refers, is curious; and as it confirms the view which we have taken, we shall quote it from the Minutes of Evidence, vol. iv. p. 223 (1837). It is dated 18th February, 1669, subsequent to the repeal of the union, and is as follows:—“The Lords of his Majesty’s Privy Council, having considered the mutual complaints depending betwixt the Town of Aberdeen, and the University called the King’s College of Aberdeen; and having seen a Right of Jurisdiction in the Bishop of Aberdeen, as Chancellor of the King’s College, for trying and judging in all cases, civil or criminal, as to any of the scholars or members thereof, exclusive of all other jurisdiction: Do therefore remit the complaint pursued by the Town of Aberdeen to the Bishop, as only proper judge thereof; and recommend to the Earl Marischal to consider of the complaint given in by the University against the College of the Newton, and to determine what satisfaction shall be made by the Newton College for the injuries done to those of the Universitie. And for better understanding and entertaining of correspondence in time coming, recommend to the Bishop of Aberdeen to be careful to administer ready and equal justice in all debates that shall happen to occur, that there be no just cause of complaint. As also, recommend to the Magistrates of Aberdeen, to be careful for preventing any disorder within their town betwixt the scholars of the University and of the Newton College hereafter; and and in case any riot or abuse fall out, that they apprehend the persons guilty, and present them to their respective masters,” &c.

This Act, even in the absence of other evidence, would be sufficient to prove that the union was at an end. The jurisdiction of the Bishop, though supreme in the University and King’s College, does not extend to Marischal College, which is now placed under its own Patron; and the position of the “Newton College,” as independent of the University, is maintained throughout

‘culties established in the said (Marischal) College, and by what authority, and when instituted?” The Return by the Senatus is:—“The Foundation Charter establishes a Dean of Faculty, with the same powers as in other Universities, but no separation of the Principal and Professors into different Faculties of Arts, Divinity, Law, and Medicine has ever taken place, they exercising, in one body, the powers of all these Faculties according to the said Charter and the Deeds confirming it.”

In this Return no reply is made to that part of the Order respecting *the different Faculties*, “by what authority and when instituted,” except a bare reference to the Charter and the deeds confirming it. There was, therefore, only *one* Charter in existence in 1827 when this Return was made; and we have already shewn that it gives to the Dean of Faculty only the powers which are possessed by the Dean of the Faculty *liberalium artium* in St. Andrew’s, &c., &c. No mention is made of any other Dean, or of any other Faculty. The same Charter conveys to the Principal the power of promoting to the Degree of Master of Arts those, and those only, who had completed their curriculum of Arts, no allusion being made to any other Degrees. No Royal Charter, so far as we know, has since been executed in favour of the College. Had such a document been in existence, it would certainly have been produced to the last Commission.

Again, ORDER LIII.—“Is there any Authority or Corporate Body, Office-bearer, or any set of individuals, who have any right of instituting new Faculties or Professorships in the said (Marischal) College; and if so, what are the rights, and Academic privileges, and immunities belonging to the same, so instituted?” Return by the Senatus:—“No Corporate Body, Office-bearer, or set of individuals, is designated in the Foundation Charter as having a right to institute new Professorships; but such a right has all along been acknowledged in practice, and is virtually acknowledged by the Crown, which has regularly supplied the vacancies that have occurred since 1716 in the Professorship of Medicine, and the office of one of the Regents, which were both instituted subsequently to the original foundation of 1593. The same right of receiving new Professorships into the College is expressly recognised in the Charter of William, Earl Marischal, of 7th October, 1623. (*Dictæ Academicæ membris legitime constitutis et constituendis.*)”

We have grave doubts as to the interpretation which, in this Return, is put upon the clause there quoted. The "Charter of Ratification and Novodamus, by William, Earl Marischal," does not profess to confer any new rights or privileges on the College, the sole object of it being, on the part of the donor, to ratify *de novo* the mortifications and bequests made by his predecessor. It makes no pretensions to the character of a new or supplementary Charter, farther than to confirm the College in the use of the greater part of the revenues originally bestowed on it, while it withdraws a certain portion which, till that time, the College had enjoyed. A new Charter would have required another ratification from Parliament, similar to that of 1593. No reference is made to it in any of the subsequent Documents printed along with the Evidence, &c., by the Royal Commission. It indicates, therefore, something like ignorance of the real character of this Charter to adduce it at all as a proof of the rights which are possessed by Marischal College. Farther, the clause which is represented as being so pregnant with meaning, does not occur in the enactive part of the Charter, but is found in the preamble along with an enumeration of the bequests contained in the original Charter of Foundation. It is more fully as follows:—"Una cum donatione et mortificatione facta . . . præceptoribus et studiosis, cæterisque ordinariis diætæ Academiæ membris, legitime constitutis et constituendis," and is merely a repetition of the following clause in the Charter of Foundation:—"ITAQUE donamus et concedimus, . . . et ad mortuam, ut aiunt, manum dimittimus præceptoribus et studiosis, cæterisque ordinariis Academiæ nostræ membris, a nobis constitutis et constituendis, totum," &c. Now, it is clear beyond all doubt that the latter clause merely grants and concedes certain revenues to the preceptors, students, and other ordinary members of the College, already appointed, or to be appointed by the Founder; in other words, to the professors and students appointed or admitted at the time when the College was founded, and to their successors: and the former clause, being nothing more than a repetition of its predecessor, cannot lay claim to a more extended signification. We might even concede the point that the Founder reserved to *himself* the power of instituting new Professorships, without in any degree weakening our argument; but neither he nor his successor seems to have entertained the intention of extending the College beyond the Faculty of Arts. Had this been the case, the Charter would have contained an ex-

pansive clause similar to that which is found in the Charter of all the Scottish Universities. In the charters granted to St. Andrews, Glasgow, and Aberdeen, besides an enumeration of the Faculties which were expressly established, the Universities are licensed to teach "*quavis alia licita facultate*;" and the Charter of the College of Edinburgh, which is unquestionably anomalous, seems to convey the same power by the words "*quarumcunque aliarum liberalium scientiarum*." No such clause is found in the Charter of Marischal College; and we must therefore maintain that its present constitution does not warrant the members to confer Degrees in any Faculty except the Faculty of Arts. There can be no doubt that the Crown possesses the power of instituting new Professorships in any of the British Universities, but the institution of a Professorship does not imply the creation of a new Faculty, unless such a Faculty is at the same time established by Charter.

There is still another subject to which we would briefly advert, as being of considerable importance in enabling us to arrive at a correct conclusion as to the real position of Marischal College. We allude to the claim made by its members, first, to a part of the books from Stationers' Hall, afterwards to a share of the Compensation Grant in lieu of the right previously possessed by the Scottish Universities; and subsequently, to be allowed to act along with the members of King's College in the selection of books. By the statutes of the 8th of Queen Anne, § 41, and 54 of George III., a copy of every work printed and published in Great Britain was ordered to be delivered at Stationers' Hall, London, for the use of the Libraries of the four Universities of Scotland, viz.:—St. Andrew's, Glasgow, Aberdeen and Edinburgh. By the Act 6 and 7 William IV., this Act was repealed, and a compensation in money was given according to the value of the books received by each University; which money was ordered to be expended in the purchase of books for the use of the University, and to be kept and preserved in the Library attached to it. After the passing of the last Act, a Memorial was presented to the Lords of Her Majesty's Treasury by the members of Marischal College, requesting a division of the money then to be appropriated to the University of Aberdeen.

In considering the result of this claim, it is proper to mention that in 1736 King's College was compelled to raise an action in the Court of Session against Marischal College, for intercepting,

getting possession of, and retaining books sent from Stationers' Hall, and the property of King's College. The ultimate decision of the Court in the case was, "That King's College of Old Aberdeen is entitled to a copy of each book lodged in the Stationers' Hall for the use of the four Universities of Scotland in terms of the Act, and that Marischal College in New Aberdeen has no title thereto in virtue of said Act." To this decision there was afterwards appended another, in consequence of a reclaiming petition from Marischal College, viz.: "That the books should be lodged in the Library of King's College for the use of both Colleges." The last part of the decision was not appealed from by King's College, partly on account of the expense, and partly also on account of the *odium*, which would have been incurred by appearing to refuse the use of the books in the Library to a Literary Institution in the immediate neighbourhood.

When the Compensation Act was passed in 1836, Marischal College again made an attempt to obtain a portion of the funds, and memorialized the Lords of Her Majesty's Treasury accordingly. Their Lordships refused to consent to a division of the funds, but intimated, that, in future, the whole money should be placed at the disposal of both Colleges, and that they should unite in the purchase of the books. With this injunction the Senatus of King's College refused to comply, and memorialized their Lordships to that effect. It would be tedious to narrate all the proceedings connected with this complicated case. A long correspondence took place between the Senatus and the Treasury, their Lordships refusing to alter their decision, and the Senatus of King's College still declining to comply with it; till at last the payment of the grant was suspended. The Senatus of King's College, however, did not give way, being quite satisfied that, though Marischal College was allowed to have the use of the books, it had no right or title, on the ground of its claim to be held as a constituent part of the University of Aberdeen, to obtain a share in the management of the fund. The Senatus accordingly, having first taken the advice of Sir William Follett and Sir Frederick Pollock, again memorialized the Lords of the Treasury, adhering to their original statement, that King's College being the only University in Aberdeen established by Royal Charter, they could not comply with the decision of their Lordships, as that would be to abandon the rights vested in them

by Charter ; and, therefore, that they, and they alone, as members of the University and King's College of Aberdeen, were entitled to have the sole management of the compensation fund. The Lord Advocate was next consulted by Government ; and, after due deliberation, gave it as his opinion, " that there is no ground ' for dividing the fund between the two Colleges, and that, as far as ' regards that fund, there is only one University Library, the immediate custody of which is in King's College." With regard to the claim that Marischal College should be allowed to have a share in the selection of the books, his Lordship, after alluding to the discordant assertions made by the two parties, and alleging that the facts founded on had not been so clearly established as to enable him to give a satisfactory answer, proposed that the two Colleges should submit to arbitration as to the manner in which the money should be expended.

This arrangement, though recommended by the Government, was not adopted by King's College ; and notwithstanding, the Lords of the Treasury, shortly afterwards, in reply to a memorial from the Senatus of King's College for payment of the compensation grant, requested to know the terms on which the members of Marischal College had been allowed to participate in the use of the Library. The answer to this communication, which contained an account of the system that had long been in operation, seems to have been satisfactory to their Lordships ; for authority was soon afterwards given to the Principal of King's College to draw the compensation grant in the usual form. Since that time the money has been regularly received and expended by the Senatus of King's College alone, the members of Marischal College not being consulted in the selection of the books, and not being allowed to exercise any control over them.

The conclusion of this dispute, independently of the other proofs which we have already adduced, is sufficient to show that the assertion made in the memorial by Marischal College to the Lords of the Treasury, viz., that it formed a part of the University of Aberdeen, is unfounded. Had their Lordships been able to satisfy themselves that Marischal College was really a constituent part of the University of Aberdeen, there is every reason to believe that they would have insisted on the claim made on its behalf being carried into effect. That they did not continue to adhere to their resolution is

a sure proof that they had no grounds for believing the assertion contained in the memorial to be correct.

The writer of the "Report relative to Marischal College," which was presented by the Royal Commissioners in 1830, states that "although the title of University was not bestowed on the new 'Institution' (Marischal College), it was put on a footing with all 'other Colleges.'" * The opinion intended to be here expressed was, we have no doubt, that Marischal College is a University; but we must be excused from attaching any value to the opinion of a man whose knowledge of the subject does not seem to have extended beyond the Charters and Evidence from which he compiled the Report. The writer of the "General Report" goes still farther, and boldly affirms that "there are two Universities in 'Aberdeen, King's College and Marischal College, the former 'situated in Old Aberdeen, and the other in the new city of Aberdeen,'" † thus, by a stroke of his pen, extinguishing the only University which exists in the North of Scotland. We have already shown that the University of Aberdeen existed prior to King's College; and although, in the later Charters, the interests of the two Institutions are identified, the latter might still be extinguished without infringing at all on the privileges of the former. King's College, as a Collegiate Institution, is merely "ane frie colledge," and not a University. These writers have been followed by others, and we accordingly find the title University frequently applied to Marischal College. It would be easy to point out similar inconsistencies in all the other Reports, with the single exception of that relative to the University of Glasgow. This, we have reason to believe, was drawn up by Principal Lee of Edinburgh, a man profoundly versed in learned antiquities, and displays an extensive and intimate acquaintance with the history and usages of Universities.

We have now laid before our readers a statement of the privileges of the University and King's College, and of Marischal College, derived chiefly from the Charters of Foundation and from the Reports of Commissioners appointed to visit the Universities of Scotland. We think that we have executed the task which we set to ourselves, fairly and impartially,—we have certainly endea-

* Report, &c., p. 344.

† Ibid. p. 21.

voured to conceal nothing; and we are not aware of having in any case intentionally misrepresented facts. We have examined the Charters, Acts of Parliament, &c., with a sincere desire to arrive at the truth, and have presented to our readers the results of our investigation. These results must speak for themselves; and we are quite satisfied that every unbiassed judge, who has followed us in the details, must come to the conclusion at which we have arrived, viz.:—*That the University and King's College, in virtue of the Charter of Foundation, Charters of Erection, Deeds of Confirmation, &c., possesses the right of conferring Degrees in all the Faculties—Arts, Divinity, Laws, and Medicine; while the privileges of Marischal College are confined exclusively to the Faculty of Arts, that being the only Faculty which is mentioned in the Charter of Foundation, or in any of the other Documents printed by the Royal Commissioners; and, therefore, that it does not possess the right of conferring Degrees in Divinity, Laws, and Medicine.*

It may perhaps appear strange to some of our readers that a College should be limited to a single Faculty; but those who have paid some attention to University history, are aware that such limitations were by no means uncommon. Were we to extend our enquiries to the earlier Continental Institutions, we might mention several *Universities* which were in this position, and others whose privileges were gradually extended. But our purpose will be served by confining ourselves to our own country. We find an instance in the case of St. Salvator's College, in the University of St. Andrew's, which, independently of the University, possessed the right of conferring Degrees in Theology and Arts, but not in Laws and Medicine,* And, to come down to more recent times, the University of London possesses the right of granting Degrees in Arts, Laws, and Medicine, but not in Divinity.

We have now, in conclusion, only to say that, if the members of Marischal College are in possession of any Charter, Act of Parliament, or other public Document which does not appear in the Evidence printed by the Royal Commissioners, and which confers on them the power of promoting to Degrees in Divinity, Laws, and Medicine, they are bound in honour to make it public, and thereby set the question at rest. Until this is done we must maintain that the opinion which we have expressed is the only correct one; and, such

* Evidence, &c. vol. iii. pp. 273, 274.

being the case, we leave it for their consideration, whether they ought to continue a practice which, to say the least of it, is a deception unworthy of an Institution otherwise standing high in the estimation of the public, and tending especially to mislead Medical Practitioners, and induce them to assume a position in their profession to which they have no legal claim. It is no justification to allege that they have, for a certain given number of years, offered these Degrees to the public, and that they have found persons ready to accept them. The intrinsic value of the Degrees is not in the least affected by such a statement ;—a right which belongs to the Crown cannot be acquired by prescription. If the right was assumed originally without authority, the same character adheres to it still, and must continue to adhere to it till a Charter is obtained from the Crown. So far as the public is concerned, the antiquity of the practice may form an excuse for those professional men who have unwittingly been led to attach to their names letters indicating distinctions which are unmeaning and valueless when proceeding from a self-constituted body ; but it is no palliation for those who unwarrantably usurp a portion of the Royal prerogative, and profess to confer honours which can be legitimately bestowed only by the Crown, or by Incorporations acting under a Royal Charter. On the same principle may the Rector and Masters of the Grammar School now commence the practice of vending Academical Degrees, in the hope that, if they are allowed, without legislative interference, to continue the traffic, their successors in office, some fifty years hence, will be entitled to assume to themselves the name and the privileges of a University.

KING'S COLLEGE, ABERDEEN,

January 1st., 1850.

APPENDIX.

I.

At the King's College of Auld Aberdⁿ, the Eleventh day of November, 1642, Convened Dr. William Guild, Principall of the said College, and Rector of the University, Dr. Patriek Dun, Principall of the Marischall College, Mr. Thomas Sandilands, Commissary of Aberdⁿ, Mr. William Moir, Baillie of Aberdⁿ, Mr. William Robertson, Minister at Footdie, Assessors, Mr. James Sandilands, Civilist, Mr. Alex^r. Middleton, Sub principall, Mr. John Lundie, Grammarian, Mr. Alex^r. Gordon, Mr. Patrick Gordon, and Mr. George Middleton, Regents. The said day, Dr. William Guild, Rector and Principall of the said College, demitted the place of Rectorship. In regard whereof, the Members and Assessors for-said proceeded to an Election of a Rector, and be a plurality of voices elected, nominate, and choosed Dr. William Guild, Principall in the King's College, Rector of King Charles' University, comprehending the said King's College and Marischall College, from the first of November, 1642, to the first November, 1643, who accepted the said office In and upon him, and gave his oath *de fidei administratione*.

Extracted by

JOHN LESLIE, *Clk.*

King's College, the twenty-third of November, 1643, Convened Dr. William Guild, Principall, Mr. James Sandilands, Civilist, Mr. Alex^r. Middleton, Sub principall, Mr. John Lundie, Grammarian, Mr. Alex^r. Gordon, Mr. Patrick Gordon, Mr. George Middleton, Regents, and Mr. William Robertson, Minister, one of the Assessors. The said day, Mr. William Guild, Rector, demitted his place of Rectorship. In regard whereof, the Members and Assessors for-said proceeded to the Election of a Rector, and be plurality of voices elected, nominate, and chuse the said Dr. William Guild, Principall of the King's College, Rector of King Charles' University of Aberdⁿ, comprehending the said King's and Marischall Colleges, from the first of November, 1643, to the first of November, 1644, who accepted of the said place In and upon him, and gave his oath *de fidei administratione*.

Extracted by

JOHN LESLIE, *Clk.*

At the King's College of Aberdⁿ, the twenty-third of Aprile, 1645, Convened Dr. William Guild, Principall and Rector of the said University, Mr. James Sandilands, Civilist, Mr. Alex^r. Middleton, Sub principall, Mr. John Lundie, Grammarian, Mr. Patriek Gordon, Mr. George Middleton, and Mr. Andrew Youngson, Regents. The said day the Principall and

Remanent Masters and Members of the Marischall College of New Aberdⁿ, being lawfully required to be present for Electing a new Rector of the said University, (as the Beddall of the said King's College declared); And as Dr. William Guild had demitted his said office of Rectory, the Members supra mentioned proceeded, and according to the foundation did nominate and elect Mr. David Lindsay, Minister of Belhelvie, to be Rector of the said University to the twenty-third of Aprile, 1646: To whom the said Election being intimate, and he required to accept the said office, he came, and personally being present, did accept of the same, and gave his oath *de fidei administratione*.

Extracted by

JOHN LESLIE, *Clk.*

II.

November the Tenth, 1663, Convened in the Principall's Chamber Alex^r. Bishop of Aberdⁿ. and Chancellor of the University, Mr. Alex^r. Middleton, Principall, Mr. Andrew Muir, Mediciner, Mr. Patrick Gordon, Civilist, Mr. Patrick Sandilands, Sub principall, Mr. Andrew Massie, and Robert Forbes, Regents: The which day, the Masters and Members taking to consideration the vacaney of the Rectorship, and the necessity of having that place filled; did, with unanimous Consent, Elect, nominate, and chuse Mr. William Scrogie to be Rector.

Extracted by

JOHN LESLIE, *Clk.*

III.

James Catanach, LL.D., Advocate in Aberdeen; Alexander Burnet, Sub-Principal; Doctor James Gregory, Professor of Medicine, both of the King's College of Old Aberdeen; and Mr. Alexander Rait, Mr. Daniel Broadfoot, and Mr. John Chalmers, Regents or Professors and Teachers in the said College,—*Appellants*.

Mr. Charles Hamilton Gordon, Advocate at Edinburgh, *Respondent*.

THE CASE OF THE APPELLANTS.

The Office of Civilist or Professor of the Civil Law in King's College of Aberdeen, being vacant by the death of Sir William Forbes, the last Professor, the Appellant, Mr. Cattanach, and the Respondent, offered themselves candidates for that office. The right of election is thus:—The Principal and Professors of the King's College elect four persons, who are called Procuratores Nationum, and these four Procuratores elected have a joint right to vote with the Principal and Professors in the election of a person to fill the vacant office of Professor.

On the 8th of June, 1743, the day appointed for the election of a Civilist, the Principal, Sub-Principal, and the Professors of the College, nine in

number, met for that purpose, and two lists of persons to be Procuratores being prepared, five of the original voters voted for one list, and four for the other. The four Procuratores elected by five, the majority, joined with that majority in the election of the Appellant, Mr. Catanach, who had thereby nine voters to four, whereupon he was declared duly elected. And the act of election and presentation being made out in the usual manner, it was the next day exhibited to Mr. Robert Paterson, Commissary of Aberdeen, which officer has, since the Revolution, acted ministerially on these occasions, as Vice Chancellor of the University, and admitted the persons elected into their offices. Mr. Paterson declared that there had been already another presentation offered to him in favour of the Respondent, and that he was resolved to admit neither until their respective rights should be determined.

To which it was answered, on behalf of Mr. Catanach, that as he was elected by so great a majority of the legal electors, and that the office of the Commissary resembled that of a Returning Officer in Scotland, who had no power to controul the proceedings at any election, he ought therefore to admit the Appellant to the office, which he was required to do under form of protest; but nevertheless he refused.

In consequence of this resolution, Mr. Paterson brought an action of Multiplepoinding or Interpleading Bill, before the Lords of Session, praying the Court to determine which of the two contending parties was entitled to be admitted into this office. The Appellant, Mr. Catanach, and the Respondent, appeared for their respective interests;—and it was admitted on all hands, that the nine persons who first met, had the undoubted right to elect the Procuratores; and, that as five of the nine had voted for four Procuratores, all of whom had joined in electing the Appellant, he thereby had an undoubted majority: But it was objected to his election that he was not qualified, and therefore that the votes given in his favour being cast away, the Respondent, though he had the minority of votes, was duly elected.

For ascertaining the qualifications requisite for this office, recourse was had to some clauses in the original Foundation relating to the persons to be employed in that University, which are in these words: *Ex quibus imprimis erunt quatuor Doctores, viz. in Theologia, quem Principalem appellari volumus; alter in Jure Canonico; Tertius in Jure Civili; et Quartus in Medicinis, si tales commode harberi possint: Alioquin in eisdem facultatibus licentiati cum rigore examinis, qui infra annum a die admissionis eorundem in dicto Collegio, ad Doctoratus gradum, singuli in præfatis facultatibus, se faciant promoveri.*

And in another Chapter “*de ascensu personarum,*” there are the following directions: *Ac etiam quum aliqua Præbendarum præfatarum, (viz., Principalis, Canonistæ, Civilistæ, &c.) vacaverit, ut unus de dicto Collegio, secundum formam præscriptam, ad illam bursam habilior et idoneor, et ad laborandum aptior, tam in his quæ sunt infra (intra) Collegium quam extra, et in omnibus ad Collegium pertinentibus circumspectior et prudentior, eligatur et instuatur. Si autem de Collegio persona ut superius qualificata, et ad hoc idonea, reperiri not poterit, extra idem de Universitate Aberdonensi eligatur: quibus singulis deficientibus, alterius Universitatis, cum conditionibus tum qualitatibus suprascriptis; alias talem personam ineligibilem penitus et inadmittibilem declaramus.* And, by another clause in their Institution which regards the residence of the Prebends, they are obliged, “*facere personalem residentiam in dicto Collegio; quod si per mensem, simul in anno, aut per vices successive, eorum aliquis*

esse absentaverit, ipso facto, ex nunc prout ex tunc, illius prebendæ seu bursæ privatum esse declaramus."

From these clauses it was urged that the person elected should have the University Degree of Doctor, or at least Licentiate; but it was admitted on all hands that this qualification had been neglected for a long time past, even in the Profession of Divinity, neither the present Principal himself, nor the Professor of Divinity, having ever been created Doctor in that Science; and that it had also been neglected with respect to the office in question; for the Appellant produced a list of Professors of Civil Law in this University, as far back as their records are extant, and it did not appear that any one of them was a graduated Doctor of Law.

RESPONDENT'S PLEA.

And it was insisted on behalf of the Respondent, that the Appellant was not qualified in the terms of the Statutes, having never received any Degree in the Civil Law from any College or University that had a power of conferring Degrees; and though it was at the same time admitted that the Respondent himself was neither a Doctor nor Licentiate in Laws, yet it was contended that, as he was admitted an Advocate in the Court of Session, that was, if not superior, at least equivalent, to any University Degree, and sufficiently qualified him for being elected into this Professorship.

ANSWERED BY APPELLANT.

On behalf of the Appellant, it was answered, that he had the qualifications required by the Statutes; for that, after studying the Law of Scotland, and having been admitted an Advocate at Aberdeen, where he studied also the Civil Law, he applied to the Marischal College of Aberdeen for a Degree in that Law; and, after an examination and trial in that College, he had the honour of having the Degree of Doctor of Law unanimously conferred on him by that learned and eminent body, who unquestionably had the power of conferring Degrees, since,—

By their Charter, confirmed by repeated Acts of Parliament, they were erected into an University, with powers of admission, matriculation, and expulsion; and particularly of bestowing all Academical Degrees and receiving new Professors.

They have ample jurisdiction within their own precincts, which no simple College ever had.

They have a Chancellor, Rector, Dean of Faculty, all elected by the Members of the University, and vested with the same powers as the Chancellor, Rector, and Dean of the Universities of St. Andrew's and Glasgow, or any other University. And the Dean of Faculty is particularly appointed to preside "*in promotionibus ad quemcumque gradum.*"

By an Act of Parliament, 1593, and confirmed at the Restoration, 1661, they had granted and confirmed to them all freedoms, franchises, liberties, free-privileges, and jurisdictions, that to any free College within this realm by law and practice is known to appertain.

By several other Acts of Parliament, they are denominated and treated by the Legislature as an University, and have always enjoyed and exercised all the powers and privileges of an University.

With regard to the pretence of the Respondent's qualification, it was answered, That where Founders required particular qualifications, Courts of Law are not at liberty to substitute equivalents in their place.

The other Appellants, who were the majority of the Electors, likewise

insisted that they were the proper judges of the qualification of a Candidate, and that their judgment in that point was not to be controuled by the Court of Session, that trust having been reposed in them by the original Statutes as well as by the constant usage and custom of the University.

The Cause coming on to be heard upon the report of the Lord Kilkerran, Ordinary, the Lords were divided in opinion, but pronounced their Interlocutor on the 20th of July, 1744, whereby they found that James Catanach, Advocate of Aberdeen (the Appellant), was not duly qualified to be elected a Professor of Civil Law in the King's College of Aberdeen; and found that Mr. Charles Hamilton Gordon, the Respondent, was duly qualified to be elected into the said office, and found the Respondent was duly elected, and preferred him to the said office, and decerned and declared accordingly.

The Appellant preferred a petition to the whole Lords, praying a review of the said Interlocutor, to which the Respondent put in an answer; and the Appellant gave in a Memorial by way of reply to the answer.

The Court having resumed the consideration of the case, did, upon the 4th of December, 1744, pronounce the following Interlocutor:—"The Lords having considered this Petition, with the answers made thereto, they adhered to their former Interlocutor, and refused the desire of the Bill."

The Appellants have appealed from the said Interlocutors of the 20th of July and 4th of December, 1744, and most humbly pray the same may be reversed, for the following among other

REASONS:

- I.—Because the Appellant, Mr. Catanaeh, had in every step of the election an undoubted majority of the legal Electors, and was deemed by them who were the proper judges, to be fitly qualified for the office of Civilist.
- II.—For that the Court of Session has, by the Judgment in question, deprived the Members of this College of their right of election, lodged in them by their Charter, and assumed the nomination of a person to the office of Civilist, whom the Members of the College rejected; notwithstanding that, if the words of the original Charter are to be the rule, the person elected alone is qualified, and the Respondent nominated by the Court of Session certainly is not so.
- III.—But, if the directions in the original Statutes are not now to be adhered to, as being abrogated by a contrary usage which the Court of Session seem to have thought, then the knowledge and learning of the Candidates remain the only guide to direct the Electors in their choice. But the Court of Session determined against the Appellant without any previous inquiry, examination, or tryal of his qualification, and have given judgment that a person regularly made a Doctor of Law, was not learned in that Science, and a person admitted an Advocate was learned in the Civil law without any evidence whatsoever of the learning of either.

For these and other reasons, the Appellants humbly hope the Interlocutors appealed against shall be reversed, and such other relief given to the Appellants, as to your Lordships, in your great wisdom and justice, shall think fit.

Signed, { A. HUME CAMPELL.
C. ERSKINE.

James Catanach, Gent., Advocate or Procurator in Aberdeen; Mr. Alexander Burnet, Sub-Principal; Doctor James Gregory, Professor of Medicine, both of the King's College in Old Aberdeen; Mr. Alexander Raitt; Mr. Daniel Braidfoot; and Mr. John Chalmers, Regents in that University,—*Appellants*.

Charles Hamilton Gordon, Esq., Advocate at Edinburgh; and Robert Paterson, Esq., Commissary of Aberdeen, Vice Chancellor of the said University,—*Respondents*.

THE RESPONDENT CHARLES HAMILTON GORDON'S CASE.

The University of Old Aberdeen, (commonly called the King's College), was erected in or about the year 1494, by virtue of a Charter granted by King James the IVth of Scotland, and was invested with the usual powers and privileges of a Royal University, and with endowments for Professors and Teachers of the Sciences, as well as of the liberal arts.

It is provided by the Charter, (among other Institutions not necessary to be mentioned), that there should be four Doctors; the first in Theology (who was to be Principal); the next in the Canon Law; the third in the Civil Law; and the fourth in Physick, if such could conveniently be found; otherwise Licentiates in those Faculties “*cum rigore examinatis, qui infra annum a die admissionis eorundem in dicto Collegio, ad Doctoratus gradum, singuli in præfatis facultatibus, se faciant promoveri.*”

And it is by the same Charter directed, that when any of the said prebends (to wit) of Principal, Canonist, Civilist, or Physician, Sub-Principal or Humanist, should become vacant, a person from the said College should be chose and instituted into that office according to the form before written, “*such as should be most fit and qualified to exercise the functions of the same, and such as should be most circumspect and prudent, as well with regard to matters within the College as without, and all matters belonging to the same College.* But, if a person so qualified could not be found in the College, then a person was to be chose (not in the College) from the University of Aberdeen; and, in default of all such, from some other University, but with the conditions and qualifications above mentioned, without which such person or persons was and were declared to be altogether incapable to be elected, and incapable to be admitted.”

Upon the Reformation in Scotland, which happened about the year 1560, the Universities in Scotland, which had all been erected, or received their authority from Bulls granted by the Pope, were reformed and new modelled, and particularly with respect to the study of Divinity, and of the Civil and Canon Law. The power of conferring the Degrees of Bachelor, Licentiate, or Doctor in Divinity or Law, which was understood to be derived from the Pope's Bulls, was abolished with the Pope's authority; and in the new models of the Universities no new power is granted, or new form instituted for conferring such Degrees; and the only Degrees in Divinity in use in Scotland since the Reformation, and during the Establishment of Presbytry, are that of Licentiate or Probationer for the Ministry and Ministers of the Church, and which are conferred by the Civil Presbyteries upon tryals before them; and the Ministers of the Church are understood to be vested with all the powers and priviledges that, before the Reformation, belonged to the Doctors of Divinity who had received their Degrees from the Universities.

And with respect to the Civil Law, the Degrees of Bachelor, Licentiate, or Doctor have been discontinued, and the only Degree in the Civil Law

known in Scotland, is that of an Advocate admitted by the Court of Session, upon a private and publick trial on the Civil Law before the Faculty of Advocates; and an Advocate so admitted has been understood to have all the privileges in Scotland that were competent to Doctors of the Civil Law before the Reformation. Such have been admitted Professors of Civil Law in the Universities of Aberdeen and Glasgow, and such only have been Professors of Civil Law in the University of Edinburgh.

In the year 1743, the office of Professor of the Civil Law in the King's College became vacant by the death of Sir William Forbes, Advocate; and the Appellant, Catanach, and the Respondent, Hamilton Gordon, were the only candidates for that office.

At the meeting for election of this date, the rules of electing a Doctor or Professor of the Civil Law were read, and it was represented to the meeting that the Respondent, who had been admitted an Advocate by the Court of Session, upon an examination of his knowledge and learning in the Civil Law, before the Faculty of Advocates, was, agreeable to the terms of the foundation, and the present state of Scotland, capable of being elected.

That the Appellant, Mr. Catanach, was utterly incapable, as he had had no University education, and had never studied the Civil Law at all; he had gone from the Grammar School to be an apprentice to a Procurator before the Inferior Courts for the Town and County of Aberdeen, where causes of small importance and of little intricacy are tried in the first instance, but which are liable to be reviewed by the Court of Session, and where no knowledge or study of the Civil Law is necessary, and a very small degree of knowledge of the Municipal Law of Scotland is a sufficient qualification; that the Appellant, after his time was expired, was himself admitted a Procurator without any other trial than by the Judge of the Inferior Court, who had himself no education in the study of Law.

On the other hand, it was represented, on behalf of the Appellant, Catanach, that he had the night preceeding the election obtained a Diploma from the Marischal College of Aberdeen, constituting him a Doctor of the Civil Law, and which, according to the letter of the Foundation Charter, qualified him to be elected; and that the Respondent, being no Doctor in the Civil Law, was incapable.

It was replied, that the Marischal College in New Aberdeen was founded many years after the King's College, (to wit), in or about the year 1593, by grant from George, then hereditary Earl Marischal of Scotland, and was thereby constituted a publick School or place of exercise, where youth might be instituted and instructed in Philosophy and the Liberal Arts, and there was not in the original Grant or Foundation thereof any Institution of the Faculties of Divinity, the Laws, or Physick, or any endowment for Professors in those branches of Science, and that College never had any powers to confer Degrees in Divinity, Law, or Physick.

The Principal and Professors in the King's College, being nine in number, proceeded to the election, and five gave their voices for the Appellant with four Procuratores Nationum chosen by them, and four gave their votes for the Respondent, Hamilton Gordon.

Each of the Candidates having obtained a presentation in his favour, they severally applied to the Respondent Paterson, Vice-Chancellor of the University, for admission into the said office of Civilist.

But Mr. Paterson, being unwilling to take upon himself the cognizance of their respective claims, was advised, for his own security and indemnifica-

tion, to bring a suit in the Court of Session in Scotland against the contending claimants, called a multiplepinding, (like an interpleading bill), by which he prayed that it might be declared by their Lordships which of the said Presentees had the best right to be admitted to the said office, and that he should only admit such person, and not be further molested by the other Presentee.

In consequence of this suit the Appellant, Cattanaeh, and Respondent, Hamilton Gordon, had an opportunity of setting forth the merits of their respective titles to the office in question, and the matter therefore was argued several times before the Lord Ordinary, who, on the 9th of June, 1744, undertook to report the debate to all the Lords, and directed informations, stating the nature of the case to be preferred by both parties.

And upon such report made, and informations preferred, their Lordships, by their Interlocutor of the 20th July, 1744, found that James Catanach, Advocate of Aberdeen, "was not duly qualified to be elected as Professor of Civil Law in the King's College in Aberdeen, and that Mr. Charles Hamilton Gordon was duly qualified to be elected into the said Office; and found that the said Mr. Charles Hamilton Gordon was duly elected, and preferred him to the said office, and decreed and declared accordingly."

Against this Interlocutor the Appellant, Catanach, preferred his reclaiming petition, in which the other Appellants, being the five electors who voted for him, joined as co-parties, praying their Lordships to review the said Interlocutor, and to find that the Appellant, Catanach, was duly elected into the said office, and to decree accordingly.

To which petition answers were put in by the Respondent Hamilton Gordon, and the Appellants preferred a memorial to the Court, by way of reply to the said answer.

And the Court having resumed the consideration of the case, did, by their Interlocutor of the 4th of December, 1744, adhere to their former Interlocutor, and refuse the desire of the petition.

From these Interlocutors, of the 20th July and 4th December, 1744, the Appellants have appealed to your Lordships, praying that they may be reversed; but the Respondent, Hamilton Gordon, humbly hopes the same shall be affirmed for the following, among other

REASONS.

First,—For that, as the practice of conferring the Degrees of Bachelor, Licentiate, or Doctor in the Civil Law upon Students in the Universities in Scotland, hath been discontinued ever since the Reformation, and the only Degree in the Civil Law known in Scotland, is that of an Advocate admitted by the Court of Session, upon a tryal upon the Civil Law by the Faculty of Advocates, so an Advocate, so admitted is understood to be tantamount to a Doctor in the Civil Law, and as such, capable of being elected Professor of the Civil Law in the Universities where such a profession is founded.

Secondly,—For that the Appellant never had any education at any University, and particularly he never studied the Civil Law in any University, or elsewhere, which might have entitled him to the Degree of Bachelor, Licentiate, or Doctor, in the Civil Law, or to be admitted Advocate, upon a tryal in the Civil Law.

Thirdly,—For that the admission of a Doctor in the Civil Law by any of the Universities in Scotland, is a thing unusual, and the

conferring such a Degree, per saltum, upon the Appellant without any previous study, and without the previous Degrees of Bachelor and Licentiate, the very night before the election, as it can afford no evidence of such Doctor's knowledge in the Civil Law, so it appears to have been an undue contrivance to conform to the letter of the Foundation, and to defeat the design and meaning of the Founder.

Fourthly,—For that the Marischal College was erected only for the study of the Liberal Arts, without any Foundation for the Profession of Divinity, Law, or Physick; therefore it never could confer Degrees in these Sciences, especially as there is at this day no Foundation for a Professor of Civil Law in this College.

Objection,—The Marischal College have been used to confer the Degree of Doctor of the Civil Law, and therefore their powers cannot be called in question in a suit to which the College is not a party.

ANSWER I.—The Foundation of this College is of a date after the Reformation in Scotland; after the period that the Degrees of a Doctor in Divinity or Law, as well as the inferior Degrees in those Sciences, came to be disused in all the Universities in Scotland, and after the privileges incident to such Degrees, before the Reformation, had ceased.

ANSWER II.—It is not said that this College created a Doctor of the Civil Law, earlier than the year 1727; and the only instance since that period, are of Doctors created without study or tryal by a Diploma given per saltum, and no privilege has ever been claimed or enjoyed in Scotland under such Diploma, granted by the Marischal College.

For which, and other reasons, to be offered at the Bar, the Respondent, Hamilton Gordon, humbly hopes that the said Interlocutors complained of, shall be affirmed, and the Appeal dismissed with costs.

Signed, { R. CRAIGIE,
W. MURRAY.

